SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19622

AMARAL BROTHERS, INC.

v.

STATE OF CONNECTICUT, DEPARTMENT OF LABOR

BRIEF OF DEFENDANT-APPELLEE
STATE OF CONNECTICUT, DEPARTMENT OF LABOR
WITH ATTACHED APPENDIX PART I AND PART II

FOR THE DEFENDANT-APPELLEE:

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COUNTER STATEMENT OF THE ISSUES

1. Did the Superior Court err in holding that the agency's regulations concerning "service" and "nonservice" employees are valid because the minimum wage laws should receive a liberal construction, and the regulations are reasonable, time-tested, they have received judicial scrutiny and they have received legislative acquiescence?

2. Did the Superior Court err in holding that the agency's regulation concerning "service" employees whose duties "relate solely to the servicing of food and/or beverages to patrons seated at tables or booths" was valid, and that employees classified as such are eligible for a reduced minimum wage?

3. Did the Superior Court err in holding that the pizza delivery drivers are not subject to a reduced minimum wage because the majority of the specific duties performed by them do not "relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service . . . ."?

TABLE OF AUTHORITIES

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I. COUNTER STATEMENT OF THE FACTS AND NATURE OF PROCEEDINGS

This is an appeal by the plaintiff, Amaral Brothers,Inc. from a decision by the trial court (*Schuman, J.*), dismissing the plaintiff's appeal from a Declaratory Ruling issued by the defendant, State of Connecticut, Department of Labor (hereinafter "DOL"), on April 11, 2014. Appendix, pgs. A5-19, A38-53.

The Declaratory Ruling of DOL affirmed the validity of an administrative regulation. The regulation, Regs. Conn. State Agencies § 31-62-E2(c) and (d), governs tip credits toward the minimum wage in the hotel and restaurant industry.

The plaintiff, which operates two Domino's franchises in Connecticut, challenged the regulation on the basis that it denies employers the minimum wage tip credit for pizza delivery drivers. The plaintiff's business model "consists of a restaurant that engages in the business of cooking and preparing pizza and other food items for delivery to the homes of customers." Appendix, p. A43.

The plaintiff's business employs approximately forty persons as delivery drivers, delivering food to customers' homes in vehicles the employees own and maintain. The plaintiff would like to compensate its drivers at a reduced minimum wage for the hours they engage in delivery duties. Appendix, pgs. A33, 39. The plaintiff specifically requested in its petition that the Commissioner declare the plaintiff's delivery drivers as "service" employees for purposes of Regs., Conn. State Agencies, § 31-62-E2(c) (1997).

If the plaintiff's drivers are classified as "service" employees, it may avail itself of "tip credits" toward the minimum wage in the hotel and restaurant industry, governed by Regs. Conn. State Agencies § 31-62-E2(c) and (d), and thereby compensate the drivers at a reduced minimum wage for the hours in which they are engaged in delivery duties "as

restaurants are permitted to do in the case of waiters and waitresses." Appendix, pgs. 30, 39. In the alternative, the plaintiff requested that DOL "amend or promulgate a new regulation permitting Petitioner to do so." Id.

On April 11, 2014, DOL issued a Declaratory Ruling denying the plaintiff's requested relief because it determined that the pizza delivery drivers "do not constitute 'service' employees within the meaning of the regulations at all times when performing [on the road] duties," and that there "exists a rational basis for the distinction under the factual circumstances as stated in this petition." Appendix, p. A53. The DOL also declined to amend or promulgate new regulations permitting the plaintiff to compensate the pizza delivery drivers at a reduced minimum wage. Id.

The plaintiff appealed that decision to the trial court. The administrative record was certified to the court on August 25, 2014, and a hearing was held before the court, *Schuman, J.*, on June 9, 2015. Thereafter, the court issued a decision dated July 8, 2015 affirming DOL's decision that the plaintiff may not pay less than the fair minimum wage to such drivers because they are not "service" employees within the meaning of the regulation. See Regs., Conn. State Agencies, § 312-62-E2(c) (1997). Specifically, the trial court held that:

> Although the commissioner decided that the regulation is inapplicable "primarily" because the "majority of the specific duties performed by the drivers do not relate 'solely to the serving of food . . .'", the commissioner also recognized that "the drivers are clearly not delivering food to 'patrons sitting at tables or booths.'" The plaintiff does not dispute that its drivers do not serve customers at tables and booths. Because the service employee regulation makes service at a table and booth a necessary (although not sufficient) part of the definition of "service employee," and the plaintiff cannot satisfy this requirement, the court affirms the department's classification on that basis alone. Regs., Conn. State Agencies § 31-62-E2 (c).

(Internal citations omitted; internal footnotes omitted.) Appendix, p. A18.

The plaintiff then appealed to the Appellate Court, and this Court transferred the appeal to itself pursuant to Conn. Prac. Bk. § 65-1.

II. ARGUMENT

The plaintiff would like to utilize the "tip credit" governed by Connecticut General Statutes § 31-60(b) and Conn. State Agencies Regs. § 31-62-E2(c) to pay its drivers a reduced minimum wage for the hours they engage in delivery duties. Appendix, pgs. A-33, 39. A review of this State's "minimum fair wage" statutes and how "tip credits" work, along with a review of over a half century of action by the legislative, executive and judicial branches is essential to understanding the issues the plaintiff has raised in this case. This review leads ineluctably to a conclusion that DOL's interpretation of Conn. Gen. Stat. § 31-60(b), and its application of the corresponding regulations, is reasonable, as was its denial of a tip credit for pizza delivery drivers.

A. THE TRIAL COURT PROPERLY DISMISSED THE PLAINTIFF'S APPEAL BECAUSE CONN. GEN. STAT. § 31-60 AUTHORIZES THE DEPARTMENT OF LABOR TO ADOPT REGULATIONS TO CARRY OUT THE PURPOSES OF THE MINIMUM WAGE LAWS.

1. Standard Of Review.

A reviewing court is limited by the terms of § 4-183(j). Specifically, a court:

> [S]hall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the

> whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Conn. Gen. Stat. § 4-183(j). "A court may not reverse or modify an agency decision unless it determines that an appellant's substantial rights . . . have been prejudiced because the [agency's] findings, inferences, conclusions or decisions contravene any one of the section's six specific provisions." (Internal quotations omitted.) Connecticut Light and Power Co. v. Department of Public Utility Control, 216 Conn. 627, 637 (1990).

Courts have followed the § 4-183(j) admonition not to substitute their judgment for that of the agency as to the weight of the evidence on questions of fact. A reviewing court may not retry the case or substitute its own judgment for that of the administrative agency. Dolgner v. Alander, 237 Conn. 272, 280 (1996). Nor should the courts indulge "in a microscopic search for technical infirmities." McCrann v. Town Plan & Zoning Commission, 161 Conn. 65, 71 (1971).

Judicial review of agency determinations requires a court to determine whether there is substantial evidence in the record to support an agency's findings and whether the conclusions drawn from those findings are reasonable. Dolgner, 237 Conn. at 280. Substantial evidence exists if the administrative record "affords a substantial basis of fact from which the fact in issue can be reasonably inferred." Connecticut Building Wrecking Co. v. Carothers, 218 Conn. 580, 593 (1991). This standard of review allows less room for judicial scrutiny than does the weight of the evidence rule or the clearly erroneous rule.[1]

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[1] The plaintiff, therefore, cannot simply show that another decision maker might have reached a different conclusion, but must instead "establish that substantial evidence does not exist in the record as a whole to support the agency's decision." Sampieri v. Inland Wetlands Agency, 226 Conn. 579, 587 (1993). "The question is not whether the trial court would have reached the same conclusion but whether the record before the commission supports the action taken." Hospital of St. Raphael v. Commission on Hospitals and Health Care, 182 Conn. 314, 318 (1980).

Id.; see also Dufraine v. Commission on Human Rights and Opportunities, 236 Conn. 250, 259-60 (1996).

Judicial review of an agency's conclusions of law is also limited. Goldstar Medical Services, Inc. v. Department of Social Services, 288 Conn. 790, 800 (2008). A court will uphold conclusions of law reached by an administrative agency if they resulted from a correct application of the law to the facts and could reasonably and logically follow from such facts. Id. The court, however, does not defer to the agency's construction of a statute "when . . . the provision at issue previously has not been subjected to judicial scrutiny or when the board's interpretation has not been time tested." (Internal quotation marks omitted.) JSF Promotions, Inc. v. Administrator, Unemployment Compensation Act, 265 Conn. 413, 417-18 (2003). Even should the court find that the agency's interpretation of the statute is "time tested," the court must also determine whether such an interpretation is "reasonable." Curry v. Allan S. Goodman, Inc., 286 Conn. 390, 407 (2008). The court then must apply "established rules of statutory construction." Id.

The court exercises plenary review over questions of statutory construction. Fullerton v. Administrator, Unemployment Compensation Act, 280 Conn. 745, 755 (2006). "The meaning of a statute shall . . . be ascertained from the text of the statute itself and its relationship to other statutes." C.G.S. §1-2z. If the "meaning" of the "text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Id. The Court's "fundamental objective is to ascertain and give effect to the apparent intent of the legislature." State v. Salamon, 287 Conn. 509, 529 (2008). "If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable

results, extratextual evidence of the meaning of the statute shall not be considered." Id. When a statute is not plain and unambiguous, however, the court looks for "interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter." Id.

2. A Tip Credit Is An Exception To The General State Policy Requiring Employers To Pay A "Minimum Fair Wage."

The state's "minimum fair wage" effective January 1, 2016 is $9.60/ hour.[2] See Conn. Gen. Stat. § 31-58(i). "The primary purpose of the minimum wage law is to require the payment of fair and just wages." West v. Egan, 142 Conn. 442 (1955). Like all remedial statutes, this Court has long held that Connecticut's "minimum wage law . . . should receive a liberal construction as regards beneficiaries so that it may accomplish its purpose." Shell Oil Co. v. Ricciuti, 147 Conn. 277, 283 (1960).

"This applies no less to the rules and regulations adopted by an administrative agency under its delegated authority to implement those laws." State of Connecticut Labor Department v. America's Cup, et al., Superior Court, judicial district of Hartford-New Britain, Docket No. CV 92 0516750 (April 15, 1994), Appendix, pgs.A77-80. In furtherance of this strong public policy of a fair minimum wage, "[t]he act necessarily contemplates appropriate administrative regulations to make it operative." Shell Oil Co., supra.

Connecticut General Statutes § 31-60(a) provides: "Any employer who pays or agrees to pay to an employee less than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this part." Thus, to the extent that an employer

[2] The State's minimum fair wage rises to $10.10/hour on January 1, 2017.

wishes to take advantage of a "tip credit" under Connecticut General Statutes § 31-60(b) or the governing regulation, it would be seeking an exception to the general rule of the employer's obligation to pay the employee a "minimum fair wage." Connecticut General Statutes § 31-60(a). This Court has "long held that . . . exceptions to statutes are to be strictly construed with doubts resolved in favor of the general rule rather than the exception." Falco v. Institute of Living, 254 Conn. 321, 330 (2000). In furtherance of the principle that minimum wage laws receive a liberal construction, it is essential that exemptions or exclusions be strictly and narrowly construed, and the "burden rests on the employer to establish that his employees come within an exemption." Shell Oil Co., supra, 283. Whether particular employees are within the coverage of the law must be determined in each case on its own particular facts. Delano v. Armstrong Rubber Co., 136 Conn. 663, 668, (1950), certiorari denied 340 U.S. 840, 71 S.Ct. 28, 95 L.Ed. 616 (1950).

A "tip credit" operates to permit an employer to pay an employee less in direct wages per hour as long as that amount, combined with the employee's tips, equals at least the minimum fair wage per hour. 29 U.S.C. § 203(m). For example, as of January 1, 2016 in Connecticut, for employees to whom a tip credit may apply, an employer may recognize gratuities those employees receive up to 36.8% of the minimum fair wage. Thus, the employer must pay at least $6.07/hour directly to employees to whom a tip credit may apply. *Available at,* https://www.ctdol.state.ct.us/wgwkstnd/wage-hour/rest-gratchart.pdf. Employees keep whatever tips they receive, but if their tips are not enough to insure that they receive at least $9.60 per hour, the employer must make up the difference.

Connecticut General Statutes § 31-58(b) provides DOL with the flexibility to determine, with or without the application of a "tip credit," the "fair wage . . . of a particular

service or class of service rendered" by taking "into account all relevant circumstances affecting the value of the services rendered." Thus, because of the disparity in impact the application of a tip credit can have on employees in the restaurant and hotel industry,[3] not surprisingly the legislature has in large measure left it to the responsible agency, DOL, to administer the details of the statute's operation, including to which employees the tip credit applies. In the absence of the legislative branch countermanding DOL's application of the statute, the judicial branch has similarly deferred.

3. West v. Egan

In 1953 this Court first addressed the issue of how the DOL minimum wage regulations properly took account of gratuities paid to waiters and waitresses. At that time, state law provided that the minimum wage could not be less than 75 cents per hour; Section 829b; and Section 838b of the general statutes in 1951 provided, in pertinent part:

> (b) The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such administrative regulations as may be appropriate to carry out the purposes of this chapter. ***Such regulations . . . may recognize as part of the minimum fair wage***, bonuses, ***gratuities***, special pay for special or extra work, deductions and allowances for the reasonable value of board,

[3] Depending on the opportunities available to a particular employee to earn gratuities – including generous gratuities — the impact of an employer's tip credit practice on employees can vary greatly. For example, if an employee averages approximately $30/hour in gratuities, the employer will only need to compensate the employee directly $6.07/hour, with the employee yielding well above the minimum fair wage per hour. As a result of applying the tip credit, the gratuities provide the employer with a modest savings in wage costs, while the employee still yields a significant amount of income above the minimum wage. If an employee in a certain sector of the industry, however, can only manage a few dollars in gratuities per hour, the employee's efforts barely bring her or him above the minimum fair wage, with the tips essentially subsidizing a percentage of the employer's minimum fair wage obligation.

> lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. . . .

(Emphasis added.) Appendix, p. A56. Pursuant to this statute, DOL promulgated a regulation that provided:

> Allowance for gratuities as part of the minimum fair wage shall not exceed 30 cents per hour for hotel and restaurant industries or not more than 15 cents per hour for employees in any other industry in which it can be established that gratuities have, prior to the effective date of [§ 1537c of the 1953] supplement to the General Statutes, customarily and usually constituted and been recognized as part of the employee's remuneration for hiring purposes for the particular employment. Gratuities received in excess of the amount specified herein as allowable need not be reported or recorded for the purposes of this regulation. The wage paid to each employee shall be at least 75 [cents] per hour for each hour worked, which may include gratuities not to exceed the limitation herein set forth provided all conditions herein set forth are met.

(Emphasis added.) West v. Egan, 142 Conn. 437, 439-40 (1955).

The plaintiffs in West v. Egan paid no wages to their waiters and waitresses, who worked only for the tips they managed to earn, which in that case exceeded the 75 cent minimum wage. The DOL regulation, however, required the plaintiffs to pay employees at least 45 cents per hour, limiting to 30 cents per hour the amount in tips the plaintiffs could count toward their employees' minimum wage. Id. The plaintiffs' challenge was twofold.

First, they claimed section 1537c was an unconstitutional delegation of legislative power to the Labor Commissioner. Specifically, they argued that simply permitting the Labor Commissioner to establish the amounts in gratuities that could count toward the minimum wage was too "uncertain and indefinite in its terms" to pass constitutional muster. Id., 441. This Court rejected that argument, ruling that it is appropriate to "authorize an administrative agency to provide the details of the operation" so long as the statute:

> [D]eclares a legislative policy, establishes primary standards for carrying it out, or lays down an intelligible principle to which the agency must conform, with a proper regard for the protection of the public interests and with such degree of certainty as the nature of the case permits, and enjoins a procedure under which, by appeal or otherwise, both public interests and private rights shall have due consideration.

Id., 442.

The Court also had no trouble rejecting the plaintiffs' contention that the "regulation allowing gratuities to be considered as part of the fair minimum wage to the extent only of thirty cents per hour for hotel and restaurant workers is unreasonable." Id., 444. The Court explained: "It is not for the court to determine whether, from the viewpoint of social welfare, gratuities should be included as part of the legal wage. The legislature has committed this determination to the labor commissioner and his advisory board as they may be called upon to deal with a particular industry." Id. The Court went on to note that the statute "could not possibly be drawn to meet every exceptional situation"; Id. at 444; and therefore delegation to the agency was appropriate.

The employer in West v. Egan complained that the DOL regulation did "not take into account the different types of restaurant and hotel operations," instead allowing only thirty cents per hour in gratuities toward the minimum wage across the board. Id., 446. The Court agreed that there "is a wide range in the amounts collected in tips in the several callings where such gratuities are usually given," and that some workers will always earn more tips than others. Id., 445. But, the Court held: "The commissioner and the board might well have concluded that tips were so precarious a return for labor that fixing some minimum guarantee of remuneration from the employer as part of the compensation received was a proper regulatory measure." Id. The Court noted that the statute authorized the Labor Commissioner to make regulations necessary to carry out the

minimum wage law, and permitted – in fact, required – input from the public and the industry before such regulations became effective. "[T]here is nothing to indicate that the fixing of thirty cents per hour as the amount of gratuities to be applied to the minimum wage was arbitrary or so unreasonable as to be illegal." Id., 448.

4. In Nearly 60 Years Since The Enactment Of Regs. Conn. State Agencies, § 31-62-E2(c) And (d), Neither The Legislative Nor Judicial Branch Has Ever Questioned The DOL's Promulgation Or Application Of The Tip Credit Regulation.

In 1958, when the DOL issued the regulations that remain in force today,[4] the statute provided DOL with discretion to make "appropriate" regulations, including regulations governing tip credits. See P.A. 57-435, § 5, Appendix, pgs. A70-71. The regulations did not direct how much the tip credit should be or to which employees it would apply.

Today, the statute similarly authorizes DOL to adopt "appropriate" regulations "to carry out the purposes of this part." Legislative action since 1958 has never sought to repeal, countermand or undermine DOL's tip credit regulations, but, to the contrary, reveal a legislative intent to shore up and complement those regulations. The doctrines of legislative acquiescence and judicial deference to an agency's long-standing interpretation and administration of a statute lead to a conclusion that DOL's regulations remain valid and reasonably applied.

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[4] When the Uniform Administrative Procedures Act ("UAPA" or "Act") was enacted in 1971, previously enacted regulations were considered valid because the Act contained a savings clause. Namely, the Act required each agency to "file in the office of the secretary of the state two certified copies of each regulation adopted by it, including ***all regulations existing on the effective date of this act***." (Emphasis added.) P.A. 71-854, § 7; see also § 8 ("Within sixty days of the date of passage of this act, the legislative commissioners shall cause to be published a compilation and index of the regulations of all state agencies effective on or before the twenty-seventh day of October, 1970").

a. The 1958 Regulation.

In 1958, pursuant to the same legislatively delegated authority that this Court had determined was not too "uncertain and indefinite in its terms," but rather appropriately authorized the agency to "provide the details of the operation of the statute"; West v. Egan, supra, 441-42; the Labor Department issued 1958, Regs., Conn. State Agencies, D.O.L., § 31-62-E2(c) and (d), effective November 25, 1958. This regulation addressed "persons employed in the restaurant and hotel occupation." In crafting that regulation, the DOL took into account the different types of restaurant and hotel operations. Specifically, the regulation distinguished between a "service" employee and a "non-service" employee for purposes of determining when tip credits apply. A "service employee" is defined as "any employee whose duties relate ***solely to the serving of food and/or beverages to patrons seated at tables or booths***, and to the ***performance of duties incidental to such service***, and who ***customarily receives gratuities***." (Emphasis added.) Regs., Conn. State Agencies, D.O.L., § 31-62-E2(c).[5] A "non-service" employee, on the other hand, is broadly defined as "an employee other than a service employee, as herein defined. A non-service employee includes, ***but is not limited to***, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at

[5] The definition of "service employee" is in the conjunctive. Therefore, an employee must meet all three requirements in order for an employer to utilize the tip credit. See Latimer v. Administrator, Unemployment Compensation Act, 216 Conn. 237, 246-47 (1990) (finding that the "ABC" test is conjunctive and that all parts must be satisfied in order for an employer to be excluded from the Act). Throughout this appeal, the plaintiff contends that the defendant abandons the portion of the regulation that "service employee" requires "the serving of food and/or beverages to patrons ***seated at tables or booths***," but such a contention is completely inaccurate. Plaintiff's Brief, pgs. 3-4. The defendant submits that the record clearly demonstrates that it *never* abandoned any portion of the regulation at issue, and that all three requirements of the definition of "service employee" must be met in order for an employer to avail itself of the tip credit.

tables or booths and who do not customarily receive gratuities as defined above." [6] (Emphasis added.) Regs., Conn. State Agencies, D.O.L., § 31-62-E2(d).

Thus, this regulation plainly provides that employers in the hotel and restaurant industry may only take an allowance for gratuities as part of the minimum fair wage for those employees in the "service" category performing service duties who "customarily" receive gratuities.[7] This regulation has not changed since 1958 and DOL has consistently applied it in implementing the minimum wage laws as they relate to tip credits. Courts routinely recognize that "agency regulations are presumed to be valid and have the force and effect of a statute." Velez v. Commissioner of Labor, 306 Conn. 475, 483 (2012).

b. Statutory Changes Since 1958.

Since 1958, amendments to the governing statute, Connecticut General Statutes § 31-60(b), have filled in some of the details of the legislature's policy regarding tip credits. None of those amendments, however, conflict in any way with the 1958 regulations drawing

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[6] The plaintiff has conceded throughout this matter that its pizza delivery drivers "do not serve food or beverages to patrons at tables or booths," and that they "do not fit squarely within either of the Department of Labor's definitions of 'service' or 'non-service employees.'" Plaintiff's Appendix, p. 757.

[7] A further distinction between the "service" and "nonservice" categories is found in Regs., Conn. State Agencies, D.O.L., §§ 31-62-E4, E5. Namely, employees who perform "both service and non-service duties, and the time spent on each is definitely segregated and so recorded, ***the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked in the service category***." (Emphasis added.) Regs., Conn. State Agencies, D.O.L., § 31-62-E4. Furthermore, Regs., Conn. State Agencies, D.O.L., § 31-62-E5(a) provides in relevant part that "[i]f an employee is engaged partly in the restaurant occupation but is also engaged partly in an occupation covered by the mercantile wage order, the provisions of the mercantile wage order shall apply to the entire work period, ***except that***, when time spent in each occupation is segregated and separately recorded, ***the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked by an employee in the restaurant service category***." (Emphasis added.)

a distinction between service and non-service employees. Nor have any of the amendments abrogated DOL's authority to enact or continue to implement the 1958 regulations.

In 1959, the legislature amended Section 31-60(b) to provide that DOL's regulations "may recognize as part of the minimum fair wage . . . gratuities *not to exceed thirty-five cents per hour for person employed in the restaurant industry*, which term shall include a hotel restaurant and not to exceed thirty cents per hour in any other industry. . . ." P.A. 59-683, Appendix, pgs. A72-76. Thus, the statute for the first time prescribed a maximum tip credit and distinguished between restaurant industry employees and employees of "any other industry." It remained discretionary for the DOL to recognize tip credits, however, and the statute did not prescribe to which employees in the restaurant industry the $.30/hr credit would apply.

In 1961, the legislature made clear that the higher tip credit (which was to rise to 40 cents in 1962 and 45 cents in 1964) applied to the "hotel and restaurant" industry and not just the restaurant industry. The maximum tip credit for "any other industry" rose to 35 cents. The statute then remained the same – as did the DOL regulation -- for nearly 20 years except the legislature further adjusted the level of the maximum tip credit. See e.g., P.A. 61-519, P.A. 67-492, P.A. 71-616; Appendix, pgs. A77-79, 80-82, 83-84.

In 1980, the legislature again amended the language of Conn. Gen. Stat. § 31-60. See P.A. 80-64; Appendix, pgs. A85-87. The pertinent part of section 1 of the bill, with changes, read as follows:

> Such regulations . . . [may] SHALL recognize, as part of the minimum fair wage, gratuities [not to exceed sixty cents per hour] IN AN AMOUNT EQUAL TO TWENTY-THREE PER CENT OF

> THE MINIMUM FAIR WAGE PER HOUR for person employed in the hotel and restaurant industry . . . .

In the House, Representative Balducci stated that the bill was "more or less a package and a compromise that has been worked out in which forty eight hours has been lowered or ***changed to forty hours***,[8] and a percentage or an index replacing the sixty cents which had previously been the method of removal on ***wages for waitresses***." (Emphasis added.) Legislative History, P.A. 80-64, House, March 26, 1980, p. 865, Appendix, p. A95. Senator Skelley explained similarly that the bill takes "away the flat [60 cent] allowance that is currently deducted from the minimum wage for ***waitresses*** and increase[d] that to 23% of the minimum wage." (Emphasis added.) Legislative History, P.A. 80-64, Senate, April 3, 1980, p. 734, Appendix, p. A98.

Thus, in 1980, the legislature articulated an intent to make two changes: First, by replacing "60 cents/hour" with 23% of the minimum wage, the legislature manifested an intention to make a change in the way tip credits are calculated in the hotel and restaurant industry. Second, by changing "may" to "shall" and removing the phrase "not to exceed," the Legislature manifested its intent to make the tip credit mandatory and not simply a credit that ***might*** apply from between 0 to 60 cents per hour. Nothing in this amendment, however, addressed the ***categories*** of employees to whom the tip credit should apply, or expressed dissatisfaction with DOL's regulation distinguishing between service and non-service employees, which at that point had been on the books for over 20 years.

That the legislature had no intent to upset DOL's administration of its regulation distinguishing between service and non-service employees became even more evident 20 years later. Specifically, more than 40 years after DOL's regulation went into effect, the

[8] This change from 48 to 40 hours related to sections 2 through 6 of P.A. 80-64, which did not affect 31-60(b) or how gratuities are credited, and are not at issue in this case.

legislature in 2000, 2001 and 2002 enacted a series of amendments seeking to clarify how the minimum wage and tip credit regulations govern bartenders. In 2000, the legislature amended 31-60(b) to insert the following sentence:

> Notwithstanding the provisions of this subsection, such regulations shall provide that during the period commencing January 1, 2001, and ending December 31, 2002, the minimum wage for persons employed in the hotel and restaurant industry, including a hotel restaurant, ***who customarily and regularly receive*** gratuities shall be four dollars and seventy-four cents per hour, except during said period the minimum wage for bartenders who customarily and regularly receive gratuities shall be six dollars and fifteen cents per hour.

(Emphasis added.) See P.A. 00-144, Appendix, pgs. 88-90. In the next two legislative sessions, this sentence was modified slightly.[9]

The plaintiff argues that with the 2002 amendment to the statute, i.e., "customarily and regularly receive gratuities," the "legislature spoke with broad language regarding the occupations that will entitle an employer to a tip credit--that is, ***anyone*** employed in the restaurant industry who customarily and regularly receives tips." (Emphasis added.) Plaintiff's Brief, p. 12. Review of the legislative history, however, instructs otherwise.

In light of the regulations that had been on the books for over 40 years and the limited category of employees (i.e., bartenders) addressed by the amendments, the plaintiff's argument is not supportable. The legislature did not include express language to

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[9] In 2000, the legislature chose to include "bartenders" in Conn. Gen. Stat. § 31-60, and to address a tip credit that employers are permitted to take with respect to bartenders. See P.A. 00-144, Appendix, pgs. 88-90; see also Legislative History, P.A. 00-144, House, April 24, 2000, p. 3209-12, Appendix, pgs. A99-102. In addition, the modifying language "customarily and regularly receive gratuities" was present in the statute with respect to "persons employed in the hotel and restaurant industry." Id. In 2001, the legislature excluded the language "customarily and regularly receive gratuities" when it included lengthy language that gratuities will be recognized in an amount of 26% of the minimum fair wage," See, P.A. 01-42, Appendix, pgs. A91-92, but the next year reinserted the previously omitted language, "customarily and regularly receive gratuities." See P.A. 02-33, Appendix, pgs. A93-94.

include other employees beyond "service" employees who *solely* serve food and beverages to patrons seated at tables or booths, and the legislative history is bereft of any evidence that the legislature amended the statute because of any disagreement with DOL's implementation of the tip credit. See Rivera v. Commissioner of Correction, 254 Conn. 214, 242 (2000) ("In the interpretation of a statute, a radical departure from an established policy cannot be implied. It must be expressed in unequivocal language. . . . Furthermore, there is a presumption that an amendatory act does not change the existing law further than is expressly declared or necessarily implied").

The better reading of the changes that took place in 2000 to 2002 is that with the inclusion of bartenders the legislature attempted to track better DOL's regulation. Since the 1950s, the regulation defining a "service" employee contained the language "customarily receives gratuities," which was applied to waiters and waitresses. See Regs., Conn. State Agencies, D.O.L., § 31-62-E2(c), Appendix, p. A58. The statute, however, did not contain such language until 2000 when bartenders were added to the statute as a new category of employee subject to a tip credit. See e.g., Appendix, pgs. A60-94. The legislature's changes in 2000 to 2002 merely clarified that waiters, waitresses, and now bartenders, were "service" employees subject to the tip credit.

When summarizing the 2002 amendment on the House floor, Representative Donovan stated:

> There is a tip credit that employers can use in calculating the minimum wage for those people – ***waiters, waitresses and bartenders*** – and in talking to the Office of Legislative Research we thought to clear up any confusion over ***waiters, waitresses and bartenders*** that we make the language to be consistent. So the language which we changed . . . add to the ***waiters and waitresses*** the same language that we have for ***bartenders***, which

> would say who customarily and regularly receive gratuities and I move adoption.

(Emphasis added.) Legislative history, P.A. 02-33, House, pgs. 1140-41, Appendix, pgs. A104-05.

Representative Donovan went on to explain:

> The amendment just deals with, we have two sections of people who receive tips waiters and waitresses people in the hotel and restaurant industry, and bartenders. We have the ***language for waiters and waitresses has been around for some 50 years, it didn't use the words customarily and regularly receive tips though that is certainly the understanding that is what the regulations call for,*** that's what we use. When the bartenders were added we put that language in and legislative research thought there was some confusion there, we wanted to clarity it. ***We're talking about the same group of people. And that's all it does, it's a technical amendment more than anything.***

(Emphasis added.) Appendix, pgs. A105-06.

Thus, as Representative Donovan noted, the language concerning waiters and waitresses has been around for more than fifty years, and the inclusion of bartenders, and only bartenders, came much later. It is clear, contrary to the plaintiff's assertions, that the legislature only included the language "customarily and regularly receive gratuities" to clarify the tip credit for a very narrow group of employees, i.e., waiters and waitresses, and to make the statute consistent with respect to the language modifying bartenders.

The legislative debate regarding the reinsertion [10] of the language, "customarily and regularly receive gratuities," in 2002 was nothing more than a "technical amendment" to "clear up any confusion over ***waiters, waitresses and bartenders***." (Emphasis added.) Legislative history, P.A. 02-33, House, pgs. 1140-42, Appendix, pgs. A104-06. Furthermore, if the plaintiff's construction of the statute is accurate, the defendant submits

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[10] See fn 9, infra.

that it was a fruitless exercise for the legislature to add bartenders to the statute in 2000 because, as the plaintiff argues, the change from "may" to "shall" in 1980 would have already encompassed such employees in the hotel/restaurant industry.

Finally, in 2013, when raising the minimum wage and modifying the percentage of the minimum wage from gratuities that can be credited toward that wage; P.A. 13-117; Co-sponsor Representative Tercyak made clear that "[n]othing in this bill changes in terms of who is eligible for the minimum wage, who is eligible for less than the minimum wages . . . because they get servers' wages with a tip credit or because they get bartenders' wages with a separate tip credit." Legislative history, P.A. 13-117, House, pgs. 7389, 7447-48, Appendix, pgs. A111-13. Arguing against raising the minimum wage because he believed that it would affect job growth, Representative Carter specifically stated that ***"[w]e're talking about when somebody might be a pizza guy***. Well, it's going to be a lot more difficult for somebody to hire an extra pizza delivery guy ***when you're going to be paying a higher minimum wage*** . . . ." (Emphasis added.) Id. The legislature clearly has never intended for all employees "in the hotel and restaurant industry" to be subject to the tip credit because, as the 2013 legislative debate demonstrates, the tip credit was intended to apply to a narrow group of "service" employees.

5. The Legislature Has Acquiesced To DOL's Interpretation Of The Statute And Its Application Of Its Regulations As Revealed By Its Modifications Since The 1950s.

Far from undermining or removing DOL's authority to continue to implement its long-standing regulation, as the plaintiff contends, the legislature's actions since the 1950s manifest an approval of, and an acquiescence in, the way DOL has administered tip credits.

The plaintiff's challenge to the DOL regulations is akin to the challenge that was brought in Velez v. Commissioner of Labor, 306 Conn. 475 (2012). In Velez, the plaintiff challenged the DOL's regulations concerning the calculation of the number of employees employed in Connecticut for purposes of the Connecticut family and medical leave statute. The statute was silent regarding whether or not out of state employees could be counted toward the seventy-five employee threshold. Id., 491 n 13. Specifically, the plaintiff claimed that the definition of "employer" in § 31-51kk(4) was "not susceptible of more than one reasonable interpretation," so "its plain meaning" required a finding that the employer was subject to the leave statute because it employed more than seventy-five people, regardless if they were located in or out of Connecticut. Id, 484. The trial court agreed with the plaintiff and DOL appealed. The DOL maintained that the Labor Commissioner's interpretation that the statute contemplates only those employers with seventy-five or more employees employed in Connecticut was "not only time-tested but also consistent with the language of the statute, related statutes, the applicable legislative history, similar federal legislation and the statute's implementing regulations." Id., 483.

In Velez, the regulations had been in existence since 1991, approximately fourteen years before the plaintiff's injury. Id., 480-81. In 1991, the regulation provided that "[t]he Commissioner *shall* determine the number of employees employed by a given employer based on data contained in the Employee Quarterly Earnings Report . . . for the third quarter of the prior calendar year . . . ." (Emphasis in original; internal quotation marks omitted.) Id. In 1996, "when the legislature amended the statute . . . to make it conform to the federal act, § 31-51qq-42 of the regulations required that the commissioner consider

only the quarterly earnings report in determining whether an employer was subject to the statute." Id., 492.

The Court determined that "if, in 1996, the legislature had disagreed with the commissioner's interpretation of § 31-51kk (4) as applying to employers with seventy-five or more employees in Connecticut, it would have taken appropriate corrective action at that time." Id. In other words, the legislature acquiesced to the Department's interpretation of the statute because it did not take corrective action. Thus, the Court rejected the plaintiff's interpretation of the statute because it would have led to unworkable results that were contrary to the purpose of the family leave act. [11] See also Southern New England Telephone Co. v. Cashman, 283 Conn. 644, 652-58 (2007) (finding that the Labor Commissioner's interpretation of the term "accumulated sick leave" in the Connecticut family and medical leave law was "compatible with the broader statutory scheme").

Here, the plaintiff argues that the trial court erred when it found legislative acquiescence with respect to the defendant's duly promulgated regulations concerning "service" and "non-service" employees. Plaintiff's Brief, p. 22. And, it argues that the trial court's reliance on Tuxis Ohr's Fuel, Inc. v. Administrator, Unemployment Compensation Act, et al., 209 Conn. 412 (2013) was improper because the circumstances in this matter are significantly different. Id. Specifically, the plaintiff argues that the "mandatory

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[11] The Velez Court reasoned that:

> The plaintiff's construction of § 31-51kk(4) . . . would ***directly contravene*** the dictates of § 31-51qq. . . . [A]n employer with just one employee in Connecticut and seventy-four employees dispersed around the world would be subject to the leave statute. We are unwilling to presume that the legislature would have intended such a result . . . .

(Emphasis added.) Velez v. Commissioner of Labor, 306 Conn. 475, 490-91 (2012).

unambiguous directive since 1980, addition of 'regularly and customarily' as a modifier to the statute and the lack of any written policy and decisions" essentially erased the DOL's regulations. Id.

The amendments to the statute since the 1950s, however, belie the plaintiff's argument because, as the trial court recognized, "the legislature has not overruled the department's interpretation," and "[m]ore importantly, the legislature has ***amended the statute nine times in this century, but it has not tampered with the department's long-standing distinction between service and non-service employees.***" (Emphasis added.) Appendix, pgs. 16-17. "These developments give rise to an inference of legislative acquiescence." Id. As the trial court noted in its well-reasoned decision, our "Supreme Court has observed, 'legislative concurrence is particularly strong when the legislature makes unrelated amendments in the same statutes.'" [12] (Internal quotation marks omitted.) Appendix, p. 17; *quoting* Patel v. Flexo Converters U.S.A., Inc., 309 Conn. 52, 62 n 9 (2013). As this Court held in Tuxis Ohr's Fuel, Inc., supra, 422-23, "the legislature's failure to make changes to a long-standing agency interpretation implies its acquiescence to the agency's construction of the statute. For these reasons, this court long has adhered to the principle that when a governmental agency's time-tested interpretation of a statute is reasonable it should be accorded great weight by the courts." (Internal quotation marks omitted.)

[12] The trial court noted that after the Back Bay case, "the legislature eliminated the sunset provision for the reduced minimum wage for bartenders and essentially made the reduced minimum wage for bartenders a permanent part of the statutory scheme." Appendix, p. A16; see also P.A. 08-113. As the trial court correctly found, "when the legislature has disagreed with the department's or a court's decision to bar employers from paying the reduced minimum wage to a certain type of employee, the legislature has taken action to remove that bar." Appendix, p. A16.

A review of the amendments and their history reveal that the legislature did not contemplate that the floodgates would open to permit employers to avail themselves of the tip credit to pay less than minimum wage for any occupation in the hotel and restaurant industry. In fact, the insertion of the language "customarily and regularly receive gratuities" in 2000 and 2002 essentially tracked the language of the regulation in making a clearer distinction regarding who is subject to the tip credit, i.e., service employees who "customarily and regularly receive gratuities." Should the legislature have intended for pizza delivery drivers, hotel shuttle bus drivers, bell hops, etc. to be subject to the tip credit because they also are employed in the hotel/restaurant industry and "customarily and regularly receive gratuities," the legislature could have included such express language as it did with bartenders in 2000. It, however, did not. And, as the plaintiff correctly notes, it is the function of the legislature to supply omissions or add exceptions to a statute, it is not the function of the courts.[13] Plaintiff's Brief, p. 13.

The record demonstrates that the regulations that define both "service" and "non-service" employees have been in existence for more than fifty years, and have been interpreted consistently by DOL to apply only to waiters, waitresses, and then later to bartenders when the legislature included such express language in 2000. See Back Bay Restaurant Group, Inc. v. State, Dept. of Labor, Superior Court, judicial district of New

[13] In addition, if the legislature did not agree with the defendant's interpretation of the statute and the corresponding regulations concerning "service" and "non-service" employees, it could have added express language one of the nine times it amended the statute to have the tip credit apply to more employees as it did with bartenders in 2000-02. It, however, did not. See Appendix, pgs. A16-17.

Britain, Docket No. CV000504360-S (Aug. 14, 2001), Appendix, pgs. 119-24.[14] As the trial court determined, because the legislature only changed the legislation once to include a new category of employee, i.e., bartenders, and has not "tampered' with the defendant's longstanding interpretation/application of the statute and regulations concerning "service" and "non-service" employees, the legislature has plainly acquiesced to DOL's interpretation.

6. The Department Of Labor Should Be Accorded Deference Because the Application Of Its Regulations Is Reasonable And They Have Been Formally Articulated And Applied For An Extended Period Of Time.

Similar to the doctrine of acquiescence, this Court has held that courts should accord deference to an agency's interpretation of a statute when the agency's interpretation has been articulated formally and applied for an extended period of time and that interpretation is reasonable. Longley v. State Employees Retirement Commission, 284 Conn. 149, 164 (2007). The great deference accorded an agency's time-tested interpretation is premised on the recognition that the standing of an agency interpretation over time, similar to judicial review, affords an opportunity for parties to contest the interpretation. City of Hartford v. Hartford Municipal Employees Association, 259 Conn. 251, 263 n. 14 (2002). Moreover, legislative inaction in not amending the statute in response to an agency interpretation is considered compelling in assessing whether to overrule a prior interpretation. Jolly, Inc. v. Zoning Board of Appeals, 237 Conn. 184, 200-01 (1996).

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[14] The plaintiff's claims in the instant appeal are similar to those of the plaintiff in Velez that were rejected by the Court. Namely, the plaintiff in the instant appeal contends that "if Conn. Gen. Stat. § 1-2z had been in effect in 1999, the Back Bay court would not have needed to comb legislative history and floor debates or comments to discern intent" because "[t]he statute itself would have been, and is sufficient." Plaintiff's Brief, pgs. 17-18.

Connecticut courts, therefore, routinely afford judicial deference to an administrative agency's "interpretation of a statutory provision over which it has cognizance . . . if that interpretation is both time-tested and reasonable." Velez v. Commissioner of Labor, 306 Conn. 475, 482 n 7 (2012). Such deference also applies to an agency's interpretation of its own duly promulgated regulations because "when an agency's interpretation of a statute is the subject of a legislatively approved regulation it is well established that an administrative agency's regulations are presumed valid and, unless they are shown to be inconsistent with the authorizing statute, they have the force and effect of a statute." (Internal quotation marks omitted.) Id., 485. Thus, even with pure questions of law, traditional deference may be given to an agency's interpretation of a statute, or regulation when it has been applied for an extended period of time and is therefore time-tested; when it has been subject to judicial scrutiny; and when it is reasonable.[15] Id. 484-85. The trial court appropriately

[15] The plaintiff argues that "the trial court should have followed the precedent set by Dep't of Public Safety v. State Bd. of Labor Relations, 296 Conn. 594, 601 n. 8 (2010), Longley v. State Emps. Retirement Comm'n, 284. 149, 163 (2007) and Starks v. Univ. of Conn., 270 Conn. 1, 30 (2004)" because in those cases the "Court invalidated inconsistent agency interpretations, without regard to the length of time that the agency had erroneously interpreted its charge." Plaintiff's Brief, p. 8. These cases are distinguishable, however, because the regulations at issue here are not inconsistent with the statute, they are reasonable and time-tested, and have been subject to judicial scrutiny. In Dept. of Public Safety v. State Bd. of Labor Relations, 296 Conn. 594, 600 (2010), the Court determined that the defendant's interpretation was not entitled to deference because the board had only interpreted § 5-270 twice and that "neither decision was subject to judicial review." 296 Conn. at 600. In Longley v. State Employees Retirement Com'n, 284 Conn. 149, 177 (2007), the Court found that the formula that the commission used since 1969 to adjust the final, prorated longevity payments for the purpose of calculating an employee's base salary in their final year of employment was not supported by the statutory scheme. The Court in Longley, however, upheld the commission's long-standing treatment of accrued vacation time payments, and reaffirmed "the principle that courts should accord deference to an agency's formally articulated interpretation of a statute when that interpretation is ***both time-tested and reasonable***." (Emphasis added.) Id., 166, 177. In Starks v. Univ. of Conn., 270 Conn. 1, 7-8 (2004), the appeal was a case of first impression because the "provisions at issue previously [were not] subjected to judicial scrutiny" and "the review

found all of these factors to apply and that DOL was therefore entitled to deference. Appendix, p. A17.

a. The Department's Interpretation Is Time Tested.

The trial court correctly recognized that by the time the legislature amended the statute in 1980, the regulations at issue "had been in effect for twenty-two years." Appendix, p. 14. The court determined that the longstanding regulations "creating the concept of 'service employee' came into effect in 1958 and have been in continuous existence since then"; thus, "[s]uch regulations are 'time-tested.'" Id., p. 9. The court's conclusion that the defendant's regulations are time-tested is reasonable and should be upheld because when the legislature included the term "shall" in 1980, it is presumed that it knew that the defendant interpreted its regulations concerning a tip credit to apply only to "service" employees, i.e., waiters and waitresses.

If the legislature intended for the tip credit to become available to a broad array of employees in the hotel/restaurant industry, i.e., delivery drivers, hotel shuttle bus drivers, hotel doormen, concierges, bell hops, etc., it would have provided such express language. The legislature, however, did not because it recognized the long-standing policy of paying "fair and just wages," West v. Egan, 142 Conn. 437 441 (1955), not reduced wages. [16]

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board's interpretation has not been time tested." Furthermore, the Court did not have duly promulgated regulations at its disposal to assist in evaluating the review board's interpretation of the relevant statutes.

[16] Connecticut General Statutes § 31-58(b) defines "fair wage" and leaves it to the Commissioner, "without being bound by any technical rules of evidence or procedure," to establish "a minimum fair wage for such service or class of service under this part." The defendant, therefore, with this statutory authority, reasonably has determined that only employees who may be classified as "service" employees will be subject to the tip credit. See Regs. Conn. State Agencies, D.O.L., § 31-62-E2(c) (1997).

Thus, the plaintiff's attempt to broaden the tip credit to encompass all employees in the hotel/restaurant hotel industry clearly is not the intent of Conn. Gen. Stat. § 31-60.

b. The trial court properly found that the *Back Bay* decision constituted judicial review of the regulations at issue.

The trial court, in its well-reasoned decision, found that the defendant's "regulations received judicial scrutiny in *Back Bay Restaurant Group, Inc. v. Dept. of Labor* . . . ." Appendix, p. A15; see also Back Bay Restaurant Group, Inc. v. State of Connecticut, Department of Labor, Superior Court, judicial district of New Britain, Docket No. CV00050436S (Aug. 14, 2001, *Cohn, J.*) Appendix, pgs. A119-24. While the legislature grappled with the tip credit language in the early 2000s, a restaurant challenged the DOL's regulation, specifically as it distinguished between service and non-service employees.

In Back Bay Restaurant Group, Inc. v. State of Connecticut, Department of Labor, supra, the plaintiff sought a declaratory ruling that it could apply tip credits to its bartenders. Applying the bartenders' duties in that case to the regulation in place since 1958, the agency determined that bartenders did not meet the definition of "service" employees and thus a tip credit could not apply. The plaintiff appealed to the trial court

Similar to the plaintiffs in West v. Egan, supra, who challenged an earlier iteration of the DOL's tip credit regulation, the plaintiff in Back Bay argued that section 31-60(b) did not authorize the DOL to distinguish between service and non-service employees in Regs., Conn. State Agencies, D.O.L., § 31-62-E2(c) and (d), and specifically did not authorize DOL to exclude bartenders from the definition of service employees, even if they served food. After "an extensive review of the text of § 31-60(b) as well as the statute's legislative history," including the 1980 changes, the court in Back Bay concluded that "Section 31-60

(b), both as originally drafted in 1951 and in its present form, authorizes the labor commissioner to issue regulations recognizing gratuities in the hotel and restaurant industry." Id., A122-23. The court went on to hold it "was within this broad delegation of power for the commissioner to issue the regulations defining service and non-service employees" and that "the Department was authorized under the delegation received from the legislature to exclude from the definition of service employee bartenders that serve food." Id.

Thus, as the trial court below in this case observed, "[i]n *Back Bay*, the court faced the question of whether the service employee regulations improperly denied employers a tip credit for employees who serve at a bar or counter . . . rather than a table or booth because this distinction is made on the basis of platform at which a patron is served rather than the employee's actual job duties." (Internal quotation marks omitted.) Appendix, p. A15. The trial court further noted that the Back Bay court "rejected essentially the same challenge that the plaintiff makes here: 'Therefore, the plaintiff's challenge to the regulations based on lack of authority must fail.'" Id. As the trial court aptly opined in the present case:

> [T]he *Back Bay* case reveals that there has been ***at least some judicial scrutiny***. Further, the case illustrates the degree of action or inaction that the legislature has taken with regard to the regulations. After the case, the legislature eliminated the sunset provision for the reduced minimum wage for bartenders and essentially made the reduced minimum wage for bartenders a permanent part of the statutory scheme. ***This development demonstrates that, when the legislature has disagreed with the department's or a court's decision to bar employers from paying the reduced minimum wage to a certain type of employee, the legislature has taken action to remove that bar.***

(Emphasis added; internal quotation marks omitted.) Appendix, pgs. A15-16.

The plaintiff maintains, however, that the court ruling in Back Bay is irrelevant because it is an "advisory decision" that "rested on an inaccurate legal premise and a factually distinguishable class of restaurant employees—bartenders." Plaintiff's Brief, p. 15. Namely, the plaintiff argues that the case is irrelevant because (1) the "decision failed to give legal effect to the legislative change in 1980"; and (2) the court "interpreted the statute as applied to bartenders," not pizza delivery drivers. Id. The plaintiff's assertions, however, are misplaced.

First, the Back Bay court in fact examined the 1980 change, as well as other legislative changes, embarking on an exhaustive review of Conn. Gen. Stat. § 31-60(b), and the related legislative history, to address the challenge to the regulations "based on lack of authority." Appendix, p. A123. The Back Bay court determined that "the plaintiff's challenge to the regulations based on lack of authority must fail" because the original statute, and its form at the time of the court's decision, "authorizes the Labor Commissioner to issue regulations recognizing gratuities in the hotel and restaurant industry." Appendix, p. A123. The court found that "[i]t was within this broad delegation of power for the commissioner to issue the regulations defining service and non-service employees," and that "the Department was authorized under the delegation received from the legislature to exclude from the definition of service employee bartenders that serve food." Id. The court further found that "up until the 2000 session, ***there was a clear intent by the legislature to differentiate between service and non-service employees.***" (Emphasis added.) Id.

Second, the mere fact that Back Bay did not address "delivery drivers" is of no moment. The case addressed the same regulation at the heart of this matter, and the same issue regarding which type of employee may be classified as either a "service" or a

"non-service" employee. Courts routinely examine prior decisions that involve the same, or similar, legal issues, in order to assist with a particular set of facts. Therefore, Back Bay is relevant to an examination of the same regulation in relation to a particular class of restaurant employee, i.e., pizza delivery drivers.[17]

c. The DOL regulations are a reasonable interpretation and application of the strong public policy to pay a fair minimum wage.

The DOL did not exceed its statutory authority when it determined that pizza delivery drivers are not "service" employees for purposes of the tip credit because they do not "solely" serve "food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service. . . ." Regs., Conn. State Agencies, D.O.L., § 31-62-E2(c). Rather, based on the statutory scheme concerning minimum wages, the DOL reasonably interpreted the statute, and reasonably adopted regulations that a tip credit may only be applied to employees in the "service" category because their "class of service rendered" provides an opportunity for more substantial gratuities. See Connecticut General Statutes § 31-58(b). Thus, it is within the purview of the Labor

[17] It is necessary to note the chronology of the Back Bay decision and the corresponding legislative actions in order to address the plaintiff's assertions regarding the relevancy of Back Bay. The plaintiff in Back Bay filed its petition for a declaratory ruling with the Commissioner of Labor on March 3, 2000. During the pendency of the declaratory ruling, the legislature debated P.A. 00-144, which included a new tip credit for bartenders in Conn. Gen. Stat § 31-60. Subsequently, Public Act 00-144 was signed by the Governor on May 26, 2000. The Commissioner then issued a ruling on the Back Bay petition on August 1, 2000. The plaintiff appealed the Commissioner's ruling, which resulted in the court's decision of August 14, 2001. The court, *Cohn, J.,* addressed the 2000 legislative change and determined that the appeal was not moot because it agreed with the plaintiff's assertion that the tip credit for bartenders was anticipated to sunset after 2002. See Appendix, p. A122 n 3. Thus, the court's analysis concerning "service" and "non-service" employees is not merely "advisory" because the court plainly addressed the statute, the corresponding regulation, and the particular duties of the employees at issue, which are relevant for these purposes.

Commissioner to determine that pizza delivery drivers should not receive a reduced minimum wage based on their "class of service rendered."[18]

Based on the foregoing, and the factual record, the trial court's decision should be affirmed because it reasonably determined that "[t]he regulations limiting the reduced minimum wage to those restaurant or hotel employees who duties relate 'solely' to the service of food and beverages at 'tables and booths' recognize that these employees may be the most likely to receive generous tips." Appendix, p. A14. And, "[t]he regulatory limitation of the reduced minimum wage to these persons insures that all other restaurant employees, who presumably do not receive as much in tips, will receive the full minimum wage," which "promotes a liberal construction of the minimum wage law, consistent with its remedial purpose." Id., pgs. A14-15.

B. THE STATE'S DECLARATORY RULING WAS REASONABLE BASED ON THE EVIDENCE PRESENTED.

1. Standard of Review.

The defendant relies on the Standard of Review as set forth in Part II.A.1.

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[18] The trial court noted that neither Regs., Conn. State Agencies, D.O.L., § 31-62-E4, nor any other regulation, *defines* "the significance of 'service employee' or provide authority for the proposition that employers can provide a reduced minimum wage to service employees," and that this "omission" should be remedied. Appendix, p. 11 n 5. The trial court even referred to the defendant's allowance of a tip credit only for those employees in the "service" category as an "unwritten practice." Id., pgs. 14-15 n 13. Despite the trial court's characterization of this regulatory scheme as an "unwritten practice," the long-standing regulatory scheme, taken as a whole, is a *harmonious and consistent body of law*, that established a clear, written policy concerning when gratuities may be included as part of the minimum fair wage.

2. The Trial Court's Decision Should Be Affirmed Because The Record Supports Its Conclusion That The Department Of Labor Reasonably Determined That Pizza Delivery Drivers Are Not "Service" Employees Within The Meaning Of The Regulations.

"Review of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable." Murphy v. Commissioner of Motor Vehicles, 254 Conn. 333, 343 (2000). The court's "ultimate duty is to determine, in view of all the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." Id. Substantial evidence contained in the record supports the defendant's conclusion that pizza delivery drivers are not subject to the tip credit codified in Conn. Gen. Stat. § 31-60(b).

In support of its petition for a declaratory ruling, the plaintiff provided the following information: (1) the plaintiff "is a Connecticut corporation which operates two (2) Domino's franchises within the state of Connecticut"; (2) the plaintiff's "franchises engage in the business of preparing and delivering pizza and other food items to customers' homes"; (3) "delivery drivers deliver the food items to the customers' homes"; (4) "[t]he food is prepared by employees, or 'insiders,'" and the "[i]nsiders generally do not perform driving/delivery duties"; (5) "[d]elivery drivers are tipped by customers . . . by credit card or by cash tendered directly to the driver at the time of delivery"; (6) "delivery drivers perform non-delivery functions"; and (7) the plaintiff is able "to segregate the time performed in the diversified capacities" of the delivery drivers. Appendix, pgs. A29-31. The plaintiff, however, failed to "describe in detail the extent of [on the road] activities," but presented the "generalized argument that all OTR duties are of a 'service' nature." Appendix, p. A50.

In addition, the plaintiff provided vast amounts of payroll information to support its position that its employees "customarily and regularly" receive generous tips and that the "tips received by the delivery drivers amounted to more than the 2013 minimum wage, at an average of about $10.00 per hour." Plaintiff's Brief, p. 2; see e.g., Plaintiff's Appendix, pgs. A40-168. The plaintiff's evidence, however, is not sufficient proof that all delivery drivers in the hotel and restaurant industry are compensated at the same level. In order to determine the wage is "fairly and reasonably commensurate with the value of a particular service or class of service rendered," it is incumbent on DOL to "take into account all relevant circumstances affecting the value of the services rendered." Conn. Gen. Stat. § 31-58(b). Read in this context, DOL's mission in implementing the fair minimum wage laws—including the tip credit—is not necessarily to ensure that the plaintiff or any employer will pay as little in wages as possible, but rather to establish a policy concerning particular service or class of service. Although it is axiomatic that some delivery drivers will receive more generous tips than others, and some waiters/waitresses will receive barely more than the minimum wage, DOL must administer a reasonable approach to determine when it is appropriate for an employer to pay less than the fair minimum wage.[19] The policy at issue, established by regulation, is such a reasonable approach and was applied appropriately to

[19] The trial court noted that neither Regs., Conn. State Agencies, D.O.L., §31-62-E4, nor any other regulation, *defines* "the significance of 'service employee' or provide authority for the proposition that employers can provide a reduced minimum wage to service employees," and that this "omission" should be remedied. Appendix, p. 11 n 5. The trial court even referred to the defendant's allowance of a tip credit only for those employees in the "service" category as an "unwritten practice." Id., pgs. 14-15 n 13. Despite the trial court's characterization of this regulatory scheme as an "unwritten practice," the defendant submits that the regulatory scheme, taken as a whole, is a *harmonious and consistent body of law*, and that it clearly establishes a long-standing, written policy concerning when gratuities may be included as part of the minimum fair wage.

the plaintiff. If the plaintiff or those similarly situated wish for a change of policy, they may petition the legislature or the agency to change the statute or the regulation.

Thus, based on the circumstances presented to DOL, the Commissioner found that the pizza delivery drivers' duties "do not relate solely to the serving of food and/or beverages." Regs., Conn. State Agencies, D.O.L., § 31-62-E2. Specifically, the defendant found the following:

> [I]n the process of transporting food items from the Petitioner's premises to the customer's home in the employee's personal vehicle, it is incumbent on the driver to: (1) possess a valid motor vehicle operator's license; (2) ensure the maintenance and operational readiness of the personal vehicle; (3) be attentive to motor vehicle laws, road and weather conditions; (4) obtain accurate directions to the destination; and (5) be able to communicate with the employer remotely—all of which bears no reasonable relationship to the serving of food.

Id., pgs. A50-51.

The defendant determined that the "on the road" duties of the pizza delivery drivers "differ materially from the nature of the 'service' performed by traditional waitstaff serving food to patrons within the confines of a restaurant."[20] Id. Namely, the defendant noted that delivery drivers had a limited ability to "establish a rapport with the restaurant customer" because their interaction with the customer "is minimal in duration and quality," which is unlike the traditional wait staff role.[21] Id., p. A51. The defendant found that "the delivery driver engages in no such interaction incidental to 'service' to the customer beyond the exchange of payment at the time of making the delivery." Id. The defendant, therefore,

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[20] The trial court noted that the defendant concluded that "the mere location to which such food items are delivered has less meaningful legal significance to this analysis than the nature of the 'service' being provided by such employees." Appendix, p. A18.

[21] The defendant noted that wait staff take the initial order, provide updates, check customer satisfaction and clean the immediate area. Appendix, p. A51.

having examined the duties of both traditional waitstaff and pizza delivery drivers, concluded that the aforementioned duties did not constitute service duties pursuant to the regulation, i.e., relating "solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service." Regs., Conn. State Agencies, D.O.L., § 31-62-E2(c).

In its careful and thorough decision, the trial court properly reviewed the certified record to deny the plaintiff's appeal. Specifically, the Court determined that "[b]ecause the service employee regulation makes service at a table and booth a necessary (although not sufficient) part of the definition of 'service employee,' and the plaintiff cannot satisfy this requirement, the court affirms the department's classification on that basis alone." Appendix, p. A18. The record plainly supports the court's determination that pizza delivery drivers are not "service" employees under the regulations. Appendix, pgs. A18, 50-51. Accordingly, the trial court's decision should be affirmed.

III. CONCLUSION

For the foregoing reasons, the defendant Department of Labor respectfully requests that this Court affirm the decision of the trial court and dismiss the plaintiff's appeal.

Respectfully submitted,

DEFENDANT - APPELLEE
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COMPENSATION ACT

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CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate procedure § 67-2, that on May 19, 2016:

(1) The electronically submitted brief and appendix was delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address was provided; and

(2) The electronically submitted brief and appendix and the filed paper brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law; and

(3) A copy of the brief and appendix was sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7; and

(4) The brief and appendix filed with the appellate clerk are true copies of the brief and appendix that were submitted electronically; and

(5) The brief complies with all provisions of this rule.

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The Honorable Carl J. Schuman.
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SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19622

AMARAL BROTHERS, INC.

v.

STATE OF CONNECTICUT, DEPARTMENT OF LABOR

APPENDIX PART I AND PART II

APPENDIX PART I

APPENDIX PART II

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HHB-CV14-6026194-S AMARAL BROTHERS, INC. v. STATE OF CONNECTICUT DEPARTMENT OF LABOR

Prefix/Suffix: [none] Case Type: A90 File Date: 05/20/2014 Return Date: 07/08/2014

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Case Information

Case Type: A90 - Appeals - All other
Court Location: New Britain JD
List Type: ADMINISTRATIVE APPEALS (AA)
Trial List Claim: 05/21/2014
Last Action Date: 08/13/2015 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 07/08/2015
Disposition: JUDGMENT AFTER COMPLETED TRIAL TO THE COURT FOR THE DEFENDANT(S)
Judge or Magistrate: HON CARL SCHUMAN

Party & Appearance Information

Party	No Fee Party	Category
P-01 AMARAL BROTHERS, INC.		Plaintiff
Attorney: FORD & HARRISON LLP (426943) 750 MAIN STREET SUITE 606 HARTFORD, CT 06103 — File Date: 05/20/2014		
D-01 STATE OF CONNECTICUT DEPARTMENT OF LABOR		Defendant
Attorney: KRISTA DOTSON OBRIEN (429603) AG-WORKER COMP/LABOR 55 ELM CT PO BOX 120 HARTFORD, CT 06141 — File Date: 05/29/2014		
Attorney: AAG THOMAS P CLIFFORD III (402616) AG-WORKERS COMP/LABOR PO BOX 120 HARTFORD, CT 06141 — File Date: 05/29/2014		

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Motions / Pleadings / Documents / Case Status				
Entry No	File Date	Filed By	Description	Arguable
	05/29/2014	D	APPEARANCE Appearance	
	05/29/2014	D	APPEARANCE Appearance	
100.30	05/20/2014	C	SUMMONS	No
100.31	05/20/2014	C	COMPLAINT	No
101.61	05/21/2014	C	CERTIFICATE OF CLOSED PLEADINGS AND CLAIM FOR TRIAL LIST	No
102.00	05/21/2014	P	RETURN OF SERVICE	No
103.00	05/21/2014	P	CERTIFICATION OF SERVICE AMENDED	No
104.00	06/10/2014	P	CASEFLOW REQUEST (JD-CV-116) *RESULT:* Granted 6/10/2014 HON JAMES ABRAMS	No
104.01	06/10/2014	C	ORDER re: #104 *RESULT:* Granted 6/10/2014 HON JAMES ABRAMS	No
105.00	06/19/2014	D	CASEFLOW REQUEST (JD-CV-116) by State of CT, Dept. of Labor *RESULT:* Order 6/19/2014 HON JAMES ABRAMS	No
105.01	06/19/2014	C	ORDER re: #105 *RESULT:* Denied 6/19/2014 HON JAMES ABRAMS	No
106.00	06/20/2014	C	ORDER *RESULT:* Order 6/20/2014 HON JAMES ABRAMS	No
107.00	08/13/2014	P	AMENDED APPEAL AND REQUEST FOR DECLARATORY RULING	No
108.00	08/25/2014	D	CERTIFICATION-DEPARTMENT OF LABOR CERTIFICATION OF ADMINISTRATIVE RECORD DEPARTMENT OF LABOR	No
109.00	09/15/2014	P	MOTION - SEE FILE TO REQUEST DISCOVERY *RESULT:* Denied 10/20/2014 HON CARL SCHUMAN	No
109.01	10/20/2014	C	ORDER *RESULT:* Denied 10/20/2014 HON CARL SCHUMAN	No
110.00	10/01/2014	D	MOTION TO MODIFY SCHEDULING ORDER by defendant re: response to plaintiff's motion for discovery *RESULT:* Granted 10/1/2014 HON CARL SCHUMAN	No
110.01	10/01/2014	C	ORDER *RESULT:* Granted 10/1/2014 HON CARL SCHUMAN	No
111.00	10/17/2014	D	OBJECTION TO MOTION OR REQUEST FOR DISCOVERY PB CH13 by Defendant re: Entry No. 109.00	No
112.00	11/10/2014	D	ANSWER TO AMENDED COMPLAINT by defendant, re: Entry 107.00	No
113.00	11/20/2014	P	MOTION FOR EXTENSION OF TIME TO FILE BRIEF *RESULT:* Granted 11/20/2014 HON CARL SCHUMAN	No
113.01	11/20/2014	C	ORDER *RESULT:* Granted 11/20/2014 HON CARL SCHUMAN	No

114.00	01/26/2015	P	MOTION FOR EXTENSION OF TIME TO FILE BRIEF *RESULT:* Granted 1/26/2015 HON CARL SCHUMAN	No
114.01	01/26/2015	C	ORDER *RESULT:* Granted 1/26/2015 HON CARL SCHUMAN	No
115.00	01/26/2015	P	CASEFLOW REQUEST (JD-CV-116) Plaintiff's Extension of Time to File its Brief	No
116.00	02/06/2015	P	BRIEF Plaintiff's Brief In Support of Its Administrative Appeal & Declaratory Judgment	No
117.00	03/03/2015	D	MOTION FOR EXTENSION OF TIME TO FILE BRIEF *RESULT:* Granted 3/4/2015 HON CARL SCHUMAN	No
117.01	03/04/2015	C	ORDER *RESULT:* Granted 3/4/2015 HON CARL SCHUMAN	No
118.00	03/31/2015	D	MOTION FOR EXTENSION OF TIME TO FILE BRIEF *RESULT:* Granted 3/31/2015 HON CARL SCHUMAN	No
118.01	03/31/2015	C	ORDER *RESULT:* Granted 3/31/2015 HON CARL SCHUMAN	No
119.00	05/05/2015	D	MOTION FOR EXTENSION OF TIME TO FILE BRIEF by Defendant *RESULT:* Granted 5/6/2015 HON CARL SCHUMAN	No
119.01	05/06/2015	C	ORDER *RESULT:* Granted 5/6/2015 HON CARL SCHUMAN	No
120.00	05/21/2015	D	BRIEF Defendant Dept of Labor's opposition to Plaintiff's Appeal from a Declaratory Ruling	No
121.00	05/21/2015	P	MOTION FOR PERMISSION TO FILE BRIEF Reply Brief *RESULT:* Granted 5/21/2015 HON CARL SCHUMAN	No
121.01	05/21/2015	C	ORDER *RESULT:* Granted 5/21/2015 HON CARL SCHUMAN	No
122.00	06/02/2015	P	REPLY Plaintiff, Amaral Bros., Inc.'s Reply Brief in Further Support of Its Adm. Appeal and Dec. Judgment	No
123.00	06/02/2015	P	EXHIBITS Exhibit A	No
124.00	06/02/2015	P	EXHIBITS Exhibit B	No
125.00	07/08/2015	C	MEMORANDUM OF DECISION	No
126.00	07/08/2015	C	JUDGMENT AFTER COMPLETED TRIAL TO THE COURT FOR THE DEFENDANT(S) *RESULT:* HON CARL SCHUMAN	No
127.00	07/27/2015	P	APPEAL TO APPELLATE COURT	No
128.00	08/13/2015	C	JUDGMENT FILE	No

Scheduled Court Dates as of 04/12/2016				
HHB-CV14-6025194-S - AMARAL BROTHERS, INC. v. STATE OF CONNECTICUT DEPARTMENT OF LABOR				
#	Date	Time	Event Description	Status
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NO. HHB CV14-6025194S	:	STATE OF CONNECTICUT
AMARAL BROTHERS, INC.	:	SUPERIOR COURT
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
DEPARTMENT OF LABOR	:	JULY 8, 2015

7/8/15
Mailed to Attys. Powell & O'Brien and Reporter of Judicial Decisions.

Memorandum of Decision

Plaintiff Amaral Brothers, Inc., appeals from the decision of the defendant department of labor (department) on a petition for a declaratory ruling that affirmed the validity of the department's regulations concerning the applicability of a reduced minimum wage for certain employees who receive tips and gratuities. Applying these regulations, the department held that the plaintiff cannot pay the reduced minimum wage, or apply a "tip credit," to its employees who serve as pizza delivery drivers. For the reasons that follow, the court affirms the department's decision.

I

The undisputed facts are as follows. (Return of Record (ROR), pp. 324-39 (Declaratory Ruling.)) The plaintiff is a Connecticut corporation that operates Domino's pizza franchises in Groton and Mystic. The plaintiff employs approximately forty persons who work in the capacity of delivery drivers. These employees deliver food items to customers' homes in vehicles that the employees own and maintain. The plaintiff reimburses each delivery driver for travel expenses. The drivers commonly receive tips from customers in the form of cash or credit card payments. The plaintiff directs such drivers to report all tips earned on an electronic system that the plaintiff maintains.

125.

The drivers also perform some nondelivery functions inside the plaintiff's facilities. The plaintiff is able to segregate the time that the drivers perform on the road from the nondelivery functions inside the facility. The time spent and wage rates paid on such nondelivery functions are not at issue in this case.

On October 18, 2013, the plaintiff filed a petition for a declaratory ruling with the commissioner of labor (commissioner) seeking a determination that it can pay a reduced minimum wage to its delivery drivers. See General Statutes § 4-176.[1] The plaintiff relied on General Statutes § 31-60 (b), which provides in part that: "The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations . . . shall recognize, as part of the minimum fair wage, gratuities in an amount . . . effective January 1, 2015, equal to thirty-six and eight-tenths per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities . . . ."[2] The plaintiff also challenged the validity and application of department

[1]Section 4-176 (a) provides: "Any person may petition an agency, or an agency may on its own motion initiate a proceeding, for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency."

[2]In full, § 31-60 (b) provides: "(b) The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesperson; learners and apprentices, their number, proportion and length of service; and piece rates in relation to time rates; and shall recognize, as part of the minimum fair wage, gratuities in an amount (1) equal to twenty-nine and three-tenths per cent, and effective January 1, 2009, equal to thirty-one per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to

regulations that distinguish between "service employees," for whom employers apparently can apply a "tip credit" and pay the reduced minimum wage, and "non-service employees" who apparently must receive the full minimum wage. See Regs., Conn. State Agencies §§ 31-62-E1 et seq. [3]

On April 11, 2014, the commissioner released her declaratory ruling. The commissioner first found that the regulations were valid. The commissioner observed, among other things, that the regulations have been the subject of prior unsuccessful legal challenges and that they are consistent with the notion that the minimum wage law should receive a liberal construction to accomplish its purposes.

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thirty-four and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to thirty-six and eight-tenths per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, (2) equal to eight and two-tenths per cent, and effective January 1, 2009, equal to eleven per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to fifteen and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to eighteen and one-half per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities, and (3) not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent with this section."

[3]As of January 1, 2015, the minimum wage in Connecticut was $9.15 per hour. Effective January 1, 2016, the minimum wage will be $9.60. Effective January 1, 2017, it will be $10.10 per hour. (Declaratory Ruling, p. 2 (citing Public Acts 2014, No. 2014-1.)

The commissioner then found that pizza delivery drivers were not "service employees" under § 31-62-E2 (c) of its regulations. In pertinent part, the regulations define a "service employee" as "any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities."[4] The commissioner reasoned that "[w]hile the drivers are clearly not delivering food to 'patrons sitting at tables or booths,' the CTDOL finds that the regulation is inapplicable primarily because the majority of the specific duties performed by the drivers do not relate *'solely* to the serving of food . . . and to the performance of duties incidental to such service . . .' within the meaning of the regulation." (Declaratory Ruling, p. 13 [Emphasis in original; footnote deleted.])

Accordingly, the commissioner declined to invalidate the regulations insofar as they do not classify pizza delivery drivers as service employees, thus preventing the plaintiff from using a tip credit or paying them a reduced minimum wage. The commissioner also declined a request to amend or promulgate new regulations.

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[4]In full, § 31-62-E2 (c) provides: "'Service employee' means any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. For the purpose of this order, a person shall not be considered to customarily receive gratuities unless a minimum of ten dollars per week in gratuities is received in the case of full-time employees, or two dollars per day in the case of part-time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer."

Section 31-62-E2 (d) defines "non-service employee" as follows: "'Non-service employee' means an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above."

The plaintiff appeals.

II

Under the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., judicial review of an agency decision is "very restricted." (Internal quotation marks omitted.) *MacDermid, Inc. v. Dept. of Environmental Protection*, 257 Conn. 128, 136-37, 778 A.2d 7 (2001). Section 4-183 (j) of the General Statutes provides as follows: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Stated differently, "[r]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the appellate] court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Okeke v. Commissioner of Public Health*, 304 Conn. 317, 324,

39 A.3d 1095 (2012). "It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law and in abuse of [its] discretion." (Internal quotation marks omitted.) *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

Our Supreme Court has stated that "[a]n agency's factual and discretionary determinations are to be accorded considerable weight by the courts. . . ." (Internal quotation marks omitted.) *Longley v. State Employees Retirement Commission*, 284 Conn. 149, 163, 938 A.2d 890 (2007). "Even for conclusions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse if its discretion. . . . [Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. . . . Cases that present pure questions of law, however, invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion. . . . Furthermore, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny . . . the agency is not entitled to special deference. . . . We have determined, therefore, that the traditional deference accorded to an agency's interpretation of a statutory term is unwarranted when the construction of a statute . . . has not previously been subjected to judicial scrutiny [or to] . . . a governmental agency's time-tested interpretation. . . . [When the agency's] interpretation has not been subjected to judicial scrutiny or consistently applied by the agency over

a long period of time, our review is de novo." (Citation omitted; internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, 310 Conn. 276, 281-83, 77 A.3d 121 (2013). These standards apply to an appeal from a ruling on a petition for a declaratory ruling. See *Angelsea Productions, Inc. v. Commission on Human Rights and Opportunities*, 236 Conn. 681, 688, 674 A.2d 1300 (1996).

III

Initially, the plaintiff challenges the validity of the departmental regulations that create the concept of "service employee." The significance of "service employee," however, is not immediately clear. Unfortunately, there is no departmental regulation that clearly states the relationship between "service employee" and the minimum wage.[5] Nonetheless, the commissioner's decision states that "[i]f such drivers were classified [as 'service employees'], Petitioner would be able to compensate the drivers at a reduced minimum wage for the hours in which they were engaged in delivery duties on the basis that Petitioner would qualify for a 'tip credit' toward the minimum wage for the amount of gratuities customarily paid to such drivers in the course of their duties in accordance with § 31-60(b)." (Declaratory Ruling, p. 2.) Although there is no regulatory authority for this statement, the plaintiff does not challenge it. Accordingly, the court will presume that this proposition fully explains the significance of the concept of

[5]At oral argument, the court questioned counsel for the department on this issue and on the meaning of Regs., Conn. State Agencies § 31-62-E4. The commissioner's ruling states that subsection E4 "affords no recognition or credit toward the minimum fair wage with respect to gratuities received by a non-service employee." (Declaratory Ruling, p. 5.) See note 4 supra. Counsel explained that subsection E4, which is entitled "Diversified employment within the restaurant industry," addresses situations in which employees perform both service and non-service duties. It does not define the significance of "service employee" or provide authority for the proposition that employers can provide a reduced minimum wage to service employees. Nor does any other regulation. The department should remedy this omission in its regulations.

"service employee."

The plaintiff's argument is that the definition of "service employee" improperly limits the tip credit that the legislature granted it. The statute uses the mandatory "shall" in stating that the "Labor Commissioner *shall* adopt such regulations . . . as may be appropriate to carry out the purposes of this part. Such regulations . . . *shall* recognize, as part of the minimum fair wage, gratuities in an amount . . . effective January 1, 2015, equal to thirty-six and eight-tenths per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities . . . ." General Statutes § 31-60 (b). See *DeMayo v. Quinn*, 315 Conn. 37, 43, 105 A.3d 141 (2014) ("shall" is ordinarily mandatory). Thus, the effect of the statute is that the commissioner must promulgate regulations guaranteeing that employers can recognize gratuities – and thus apply a tip credit – for all hotel and restaurant employees other than bartenders who "customarily and regularly receive gratuities."[6]

The regulations, however, do not do that. As construed by the commissioner, the regulations restrict the tip credit to "service employees" whose "duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities." Regs., Conn. State Agencies § 31-62-E2 (c). Thus, logically, a restaurant may not be able to apply a tip credit for its employees who customarily receive gratuities, and thus who fully satisfy the statutory requirement, because

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[6]The regulations define "restaurant occupation" and "restaurant employee" to include "employees of . . . pizzerias." Regs., Conn. State Agencies § 31-62- E2(a) and (b). There is no dispute that the plaintiff's delivery drivers are "employed in the . . . restaurant industry" within the meaning of the statute. (Declaratory Ruling, p. 4.)

their duties do not satisfy the regulatory requirement that they "relate solely to the serving of food and/or beverages to patrons seated at tables or booths." The plaintiff claims that the department has no authority to promulgate regulations that restrict its statutory rights in this regard. See, e.g., *Kinney v. State*, 213 Conn. 54, 60 n.10, 566 A.2d 670 (1989) ("administrative agencies . . . must act strictly within their statutory authority . . . .")

The department, at oral argument, acknowledged that its regulations limit the applicability of the tip credit or reduced minimum wage in a way not authorized by the plain language of the statute. The department justifies its regulations on the ground that they are time-tested and reasonable, that the minimum wage law should receive a liberal construction, and that the regulations have received judicial scrutiny and legislative acquiescence.

The court agrees with the department. There is no dispute that the regulations creating the concept of "service employee" came into effect in 1958 and have been in continuous existence since then. See *Back Bay Restaurant Group, Inc. v. Dept. of Labor*, No. CV00-0504360S, 2001 WL 1042594, at *1 (Conn. Super. Ct. Aug. 14, 2001). Such regulations are "time-tested." See *STEC v. Raymark Industries*, 299 Conn. 346, 357, 10 A.3d 1 (2010).

The regulations are also reasonable. First, at the time of their promulgation, the statute, which came into existence in 1951, provided that the department's regulations "*may* recognize as part of the minimum fair wage . . .gratuities . . . ." (Emphasis added.) General Statutes (Cum. Sup. 1951) § 838b (b).[7] Hence, the statute used the permissive term "may" rather than the

[7]Sec 838b (b) provided in pertinent part: "The labor commissioner, after consultation with a board . . . shall make such administrative regulations as may be appropriate to carry out the purposes of this chapter. Such regulations . . . may recognize as part of the minimum fair wage, bonuses, gratuities, special pay for special or extra work, deductions and allowances for the reasonable value of board, lodging, apparel or other items or services supplied by the employer;

mandatory "shall" with regard to the department's duty to authorize a tip credit to employers whose workers received gratuities. See *State v. Bletsch*, 281 Conn. 5, 17-18, 912 A.2d 992 (2007) ("may" imports permissive conduct). The discretion granted to the commissioner to promulgate regulations in this area thus fully permitted regulations limiting the tip credit to employers of "service employees" whose duties related solely to the service of food and beverages at tables and booths and who customarily received tips. It was not until 1980 that the legislature amended the statute to substitute "shall" for "may" and thus purportedly made recognition of gratuities for all restaurant employees mandatory. See Public Acts 1980, No. 80-64.[8] By this time, the regulations limiting the tip credit to service employees had been in effect for twenty-two years.

The regulations are also reasonable because they are consistent with the notion that "[t]he minimum wage law, like our workmen's compensation and unemployment compensation laws, should receive a liberal construction as regards beneficiaries so that it may accomplish its purpose." *Shell Oil Co. v. Ricciuti*, 147 Conn. 277, 282-83, 160 A.2d 257 (1960). The regulations limiting the reduced minimum wage to those restaurant or hotel employees whose duties relate "solely" to the service of food and beverages at "tables and booths" recognize that these employees may be the most likely to receive generous tips. See *Back Bay Restaurant Group, Inc. v. Dept. of Labor*, supra, 2001 WL 1042594, at *7.[9] The regulatory limitation of the

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and other special conditions or circumstances which may be usual in a particular employer-employee relationship."

[8]Public Acts 1980, No. 80-64, § 1 amended § 31-60 (b) to replace the word "may" with "shall" in the following phrase: "Such regulations . . . shall recognize, as part of the minimum fair wage, gratuities . . . ."

[9]In comparing the potential for bartenders to receive tips with that of waiters and waitresses, the *Back Bay* court quoted the department's declaratory ruling on the issue: "'There is

reduced minimum wage to these persons insures that all other restaurant employees, who presumably do not receive as much in tips, will receive the full minimum wage. The regulatory limitation thus promotes a liberal construction of the minimum wage law, consistent with its remedial purpose. See *Shell Oil Co. v. Ricciuti*, supra, 147 Conn. 282-83.

The department's regulations received judicial scrutiny in *Back Bay Restaurant Group, Inc. v. Dept. of Labor*, supra, 2001 WL 1042594 (*Back Bay*). In *Back Bay*, the court faced the question of whether the service employee regulations improperly denied employers a tip credit for employees who serve "'at a bar or counter [especially bartenders] rather than a table or booth because this distinction is made on the basis of [sic] platform at which a patron is served rather than the employee's actual job duties.'" Id., *1.[10] The court rejected essentially the same challenge that the plaintiff makes here: "Therefore, the plaintiff's challenge to the regulations based on lack of authority must fail. Section 31-60 (b), both as originally drafted in 1951 and in its present form, authorizes the labor commissioner to issue regulations recognizing gratuities in the

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also a noteworthy distinction in terms of gratuity compensation for bartenders and waitstaff who are engaged in the same "service" duties to patrons seated at "tables or booths." Generally, gratuities from these patrons are provided directly to waitstaff rather than to the individual bartenders who prepared the beverages. As a result, bartenders do not receive an amount of gratuities which is comparable to their "service" employee counterparts for the same type of "service" employee duty. The decreased opportunity for gratuities from patrons seated at "tables or booths" provides additional justification for the regulatory prohibition on the payment of less than the minimum wage to bartenders.'" Id.

[10]At the time of the petition for a declaratory ruling in *Back Bay*, the statute did not contain any specific mention of bartenders. During the pendency of the case, the legislature added a specific tip credit for bartenders but set it to expire in 2002. The court treated the case as one in which the statute contained no permanent provision for employers of bartenders and, therefore, a case in which the reason for the denial of a tip credit for such employers was the department's regulation. See *Back Bay*, supra, 2001 WL 1042594, at *5 & n.3 (citing Public Acts 2001, No. 01-42; Public Acts 2000, No. 00-144.)

hotel and restaurant industry. It was within this broad delegation of power for the commissioner to issue the regulations defining service and non-service employees. Further, the department was authorized under the delegation received from the legislature to exclude from the definition of service employee bartenders that serve food." Id., at *6. The court went on to approve the commissioner's exclusion of bartenders from the category of service employees. Id., at *6-7.

Although the department does not rely on any other court case as having validated the department's service employee regulations, the *Back Bay* case reveals that there has been at least some judicial scrutiny. Further, the case illustrates the degree of action or inaction that the legislature has taken with regard to the regulations. After the case, the legislature eliminated the sunset provision for the reduced minimum wage for bartenders and essentially made the reduced minimum wage for bartenders a permanent part of the statutory scheme. See Public Acts 2008, No. 08-113.[11] This development demonstrates that, when the legislature has disagreed with the department's or a court's decision to bar employers from paying the reduced minimum wage to a certain type of employee, the legislature has taken action to remove that bar.

While it is unclear how long the department has interpreted its regulations to prevent employers from applying a tip credit to the wages for pizza delivery drivers, it is clear that the legislature has not overruled the department's interpretation. More importantly, the legislature has amended the statute nine times in this century, but it has not tampered with the department's

[11]In pertinent part, Public Acts 2008, No. 08-113 amended General Statutes § 31-60 (b) to provide as follows: "The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations . . . shall recognize, as part of the minimum fair wage, gratuities in an amount . . . (2) equal to eight and two-tenths per cent, and effective January 1, 2009, equal to eleven per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities . . . ."

long-standing distinction between service and non-service employees. See Public Acts 2014, No. 14-42; Public Acts 2013, No. 13-140; Public Acts 2013, No. 13-117; Public Acts 2008, No. 08-113; Public Acts 2004, No. 04-68; Public Acts 2003, No. 03-278; Public Acts 2002, No. 02-33; Public Acts 2001, No. 01-42; Public Acts 2000, No. 00-144. These developments give rise to an inference of legislative acquiescence. See *Tuxis Ohr's Fuel, Inc. v. Administrator, Unemployment Compensation Act*, 309 Conn. 412, 422-23, 72 A.3d 13 (2013); cf. *Hartford v. Hartford Municipal Employees Association*, 259 Conn. 251, 262 n.14, 788 A.2d 60 (2002) (inference of acquiescence more appropriate when there is a formal declaration of policy). As our Supreme Court has observed, "[l]egislative concurrence is particularly strong [when] the legislature makes unrelated amendments in the same statute . . . ." (Internal quotation marks omitted.) *Patel v. Flexo Converters U.S.A., Inc.*, 309 Conn. 52, 62 n.9, 68 A.3d 1162 (2013). That is the case here.

The fact that the department's regulations in this case are time-tested and reasonable entitles them to some deference. See *Longley v. State Employees Retirement Commission*, supra, 284 Conn. 166. The regulations should also receive deference because they have been subject to some judicial scrutiny and there has been legislative acquiescence in their operation. See *Chairperson, Connecticut Medical Examining Board v. Freedom of Information Commission*, supra, 310 Conn. 281-83; *Tuxis Ohr's Fuel, Inc. v. Administrator, Unemployment Compensation Act*, supra, 309 Conn. 422-23; *Peruta v. Freedom of Information Commission*, 157 Conn. App. 684, 688-89, ___ A.3d ___ (2015). Giving due weight and deference to the department's interpretation of General Statutes § 31-60 (b), the court concludes that the department's regulations are valid.

IV

The other issue raised by the plaintiff is whether the department properly classified pizza delivery drivers as "service employees" under the regulations. The plaintiff contends that the department improperly relied on facts not in evidence in concluding that the duties of delivery drivers do not relate "'*solely* to the serving of food . . . and to the performance of duties incidental to such service . . .' within the meaning of the regulation." (Declaratory Ruling, p. 13 [Emphasis in original; footnote deleted.])

Although the commissioner decided that the regulation is inapplicable "primarily" because the "majority of the specific duties performed by the drivers do not relate *'solely* to the serving of food . . .'", the commissioner also recognized that "the drivers are clearly not delivering food to 'patrons sitting at tables or booths.'"[12] The plaintiff does not dispute that its drivers do not serve customers at tables and booths. (Plaintiff's brief, p. 7.) Because the service employee regulation makes service at a table and booth a necessary (although not sufficient) part of the definition of "service employee," and the plaintiff cannot satisfy this requirement, the court affirms the department's classification on that basis alone. Regs., Conn. State Agencies § 31-62-E2 (c).[13]

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[12]The commissioner also noted that "the mere location to which such food items are delivered has less meaningful legal significance to this analysis than the nature of the 'service' being provided by such employees." (Declaratory Ruling, p. 13 n.8.)

[13]The plaintiff goes on to argue that its drivers also do not meet the definition of "non-service employee." Regs., Conn. State Agencies § 31-62-E2 (d). The department responds that the first sentence of the definition of "non-service employee" states that a "non-service employee" means "an employee other than a service employee, as herein defined." See note 4 supra. The court agrees with the department that "as herein defined" logically refers to the definition of "service employee" as defined in the previous subsection of the regulation. Because a delivery driver is not a "service employee," it necessarily follows that such a person is a "non-service employee." The second sentence of the definition states that a "non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and

V

The court affirms the commissioner's decision and dismisses the appeal.

It is so ordered.

Carl J. Schuman
Judge, Superior Court

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those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above." This sentence is inapplicable here because of the phrase "includes but is not limited to," which means that the second sentence does not limit the first sentence under which a delivery driver is clearly a non-service employee.

In any event, the commissioner did not reach the question of whether a driver is a "non-service employee" but instead merely made the linguistically distinct finding that a driver is not a "service employee." Because of the department's unwritten practice of allowing a tip credit to employers only in the case of a service employee, which the court has discussed, the commissioner properly ruled that the plaintiff may not take a tip credit for its delivery drivers.

STATE OF CONNECTICUT

A.C. 38207 HHB CV 14-6025194	:	SUPERIOR COURT
AMARAL BROTHERS, INC. 203 North Anguilla Road Pawcatuck CT 06379	:	TAX SESSION JUDICIAL DISTRICT OF NEW BRITAIN
V.	:	
STATE OF CONNECTICUT, DEPARTMENT OF LABOR 200 Folly Brook Boulevard Wethersfield CT 06109	:	July 8, 2015

OFFICE OF THE CLERK
SUPERIOR COURT
2015 AUG 13 PM 4 09
JUDICIAL DISTRICT OF
NEW BRITAIN

Present: **The Honorable Carl J. Schuman, Judge**

JUDGMENT

This action, in the nature of an appeal from a decision of the defendant, came to this court on July8, 2014, and thence to later dates when the parties appeared and were at issue before the court, as on file, and thence to the present time.

WHEREUPON, it is adjudged that the plaintiff's appeal be and is hereby DISMISSED, after the court affirmed the decision of the defendant department of labor finding that the department's regulations were "time-tested and reasonable" and that plaintiff's delivery drivers did not fall within the definition of "service employees" under Regs., Conn State Agencies § 31-62-E2(c).

By the Court,

Stephen Goldschmidt, Court Officer

128.00

APPEAL - CIVIL

JD-SC-28 Rev. 12-09
P.B. §§ 3-8, 62-6, 63-3, 63-4, 63-10
C.G.S. §§ 31-301b, 51-197f, 52-470

See Instructions on Back/page 2

☐ To Supreme Court ☒ To Appellate Court

Name of case *(State full name of case as it appears in the judgment file)*
Amaral Brothers, Inc. v. State of Connecticut Department of Labor

Classification
☒ Appeal ☐ Cross appeal ☐ Joint appeal ☐ Amended appeal ☐ Stipulation for reservation ☐ Corrected/amended appeal form ☐ Other *(Specify)*

Trial Court History

Tried to	Trial court location
☒ Court ☐ Jury	20 Franklin Square, New Britain, CT 06051

Trial court judges being appealed	List all trial court docket numbers, including all location prefixes
Honorable Carl Schuman	HHB-CV14-6026194-S
All other trial court judge(s) who were involved with the case: Honorable James Abrams	

Judgment for *(Where there are multiple parties, specify any individual party or parties for whom judgment may have been entered.)*
☐ Plaintiff ☒ Defendant ☐ Other:

Judgment date of decision being appealed	Date of issuance of notice on any order on any motion which would render judgment ineffective	Date for filing appeal extended to
7/8/2015		

Case type
☐ Juvenile — Termination of Parental Rights ☐ Juvenile — Order of Temporary Custody ☐ Juvenile — Other
☒ Civil/Family: Major/Minor code A90 ☐ Habeas Corpus ☐ Workers compensation ☐ Other
For habeas corpus or zoning appeals indicate the date certification was granted:

Appeal

Appeal filed by *(Where there are multiple parties, specify the name of the individual party or parties filing this appeal.)*
☒ Plaintiff(s) ☐ Defendant(s) ☐ Other

From *(the action which constitutes the appealable judgment or decision):* Judgment After Completed Trial to the Court for the Defendant

If to the Supreme Court, the statutory basis for the appeal *(Connecticut General Statutes section 51-199)*

By *(Signature of attorney or self-represented party)*	Telephone number	Fax number	Juris number *(if applicable)*
► Robin Kallor	860-748-4660	860-241-1547	426943

Appearance

Type name and address of person signing above *(This is your appearance; see Practice Book section 62-8)*	E-mail address
Robin B. Kallor, Rose Kallor, LLP, 750 Main Street, Ste 606, Hartford, CT 06103	rkallor@rosekallor.com

"X" one if applicable
☐ Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court under Practice Book section 62-8.
☐ Under Practice Book section 3-8, counsel or self-represented party who files this appeal is appearing in place of:

Name of counsel or self-represented party	Juris number *(if applicable)*

Certification (Practice Book section 63-3)

I certify that a copy of this appeal was mailed or delivered to all counsel and self-represented parties of record as required by Practice Book section 62-7 on:* Signed *(Individual counsel/self-represented party)*
► Robin Kallor

** Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address where the copy was mailed or delivered.*

To Be Completed By Trial Court Clerk
☐ Entry Fee Paid ☐ No Fees Required ☐ Fees, Costs, and Security waived by Judge *(enter judge's name below)*

Court Use Only
Date and time filed

Judge	Date waived
Signed *(Clerk of trial court)*	Date

The clerk of the original trial court, if different from this court, was notified on _____ that this appeal was filed.
In habeas matters, a copy of this endorsed appeal was provided to the Office of the Chief State's Attorney, Appellate Bureau, on _____.

Documents to be given to the Appellate Clerk with the endorsed Appeal form

The following documents must be filed with the Appellate Clerk when filing the endorsed appeal form; Practice Book sections 63-3 and 63-4.
1. Preliminary Statement of the Issues
2. Preliminary Designation of Pleadings
3. Court Reporter's Acknowledgment/Certification re transcript
4. Docketing Statement
5. Statement for Preargument Conference (form JD-SC-28A)
6. Draft Judgment File
7. Constitutionality Notice *(if applicable)*
8. Sealing Order form, if any
9. List of counsel of record in trial court (DS1 received from clerk)
10. Proof of receipt of the copy of the endorsed appeal form by the original trial court clerk or the clerk of the court or courts where the case was transferred, if the case was in more than one trial court

Certification

I certify that a copy of the endorsed appeal and all documents to be given to the Appellate Clerk with the endorsed Appeal form were mailed or delivered to all counsel and self-represented parties of record* as required by Practice Book section 63-3 on: Signed *(Individual counsel or self-represented party)*
►

** Attach a list with the name, telephone number and fax number of each counsel and self-represented party and the address at which the copy was mailed or delivered.*

DOCKET NO.: HHB-CV-14-6025194S	:	SUPERIOR COURT
AMARAL BROTHERS, INC.	:	
	:	J.D. OF HARTFORD
v.	:	
	:	AT NEW BRITAIN
STATE OF CONNECTICUT	:	
DEPARTMENT OF LABOR	:	JULY 27, 2015

CERTIFICATION

This is to certify that a copy of this Appeal has been sent to all counsel and pro se parties of record via U.S. Mail this 27th day of July, 2015.

Thomas P. Clifford, III, Esq.
Krista D. O'Brien, Esq.
State of Connecticut
Office of the Attorney General
Workers Comp/Labor
55 Elm Street
P.O. Box 120
Hartford, CT 06141

PLAINTIFF,
AMARAL BROTHERS, INC.

By _____

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STATE OF CONNECTICUT
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In Re: Amaral Brothers Pizza, LLC, :

Petitioner : OCTOBER 16, 2013

Michael J. Rose, Esq.
Robin B. Kallor, Esq.
Rose Kallor, LLP
750 Main Street, Suite 606
Hartford, Connecticut 06103
Attorneys for Amaral Brothers Pizza, LLC

PETITION FOR DECLARATORY RULING AND PETITION FOR REGULATION

Particular State, Regulation or Order for which a Ruling is Sought/Statement of the Issues Upon Which The Ruling Is Requested

1. Pursuant to Conn. Gen. Stat. §§ 4-174 and 4-176, as well as § 31-1-11 *et seq.* of the Regulations of Connecticut State Agencies, Petitioner, Amaral Brothers Pizza, LLC ("Petitioner"), seeks a declaratory ruling regarding the validity and applicability of the Regulations of the Connecticut State Agencies, §§ 31-62-E1, 31-62-E2 and 31-62-E3 to include delivery drivers within the definition of "service employees" so as to permit the Petitioner to pay a modified minimum wage in the form of a "tip credit" for hours that drivers are performing delivery duties for the Petitioner. If § 31-62-E2 and § 31-62-E3 excludes delivery drivers from this definition, Petitioner is requesting that § 31-62-E2 be amended or that a new regulation be promulgated to permit the Petitioner to pay a reduced minimum wage in the form of a "tip credit" for hours that drivers are performing delivery duties for the Petitioner.

Factual Background and Circumstances Giving Rise to the Request/Analysis of the Public Policy Reasons and Legal Justification Favoring the Proposed Declaratory Ruling

2. Conn. Gen. Stat. § 31-60(b) charges the Labor Commissioner with the responsibility of adopting regulations to carry out the purposes of Chapter 558 of the Connecticut General Statutes, in part to "recognize, as part of the minimum fair wage, gratuities in the amount '(1) equal to twenty-nine and three-tenths per cent, and effective January 1, 2009, equal to thirty-one per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to thirty-four and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to thirty-six and eight-tenths per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, (2) equal to eight and two-tenths per cent, and effective January 1, 2009, equal to eleven per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to fifteen and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to eighteen and one-half per cent of the minimum wage per hour for persons employed as bartenders who customarily and regularly receive gratuities, and (3) not to exceed thirty-five cents per hour in any other industry, ..." (emphasis supplied).

3. In accordance with Conn. Gen. Stat. § 31-60(b), the Department of Labor promulgated, *inter alia*, § 31-62-E of the Regulations of the Connecticut State Agencies, *Minimum Fair Wage Rates for Persons Employed in the Restaurant and Hotel Restaurant Occupations*.

4. Section 31-62-E1 of the Regulations of the Connecticut State Agencies sets forth a lower minimum wage: "for persons employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities shall be four dollars and

seventy-four cents per hour, except during said period, the minimum wage for bartenders who customarily and regularly receive gratuities shall be six dollars and fifteen cents per hour."

5. Section 31-62-E1 does not specifically require that the reduced minimum wage be limited to "service employees." It only requires that the person be employed in the hotel and restaurant industry and customarily and regularly receive gratuities. The only exception is for bartenders who are to be paid at a reduced minimum wage, but at a higher rate than those who receive gratuities, but who are not bartenders. Section 31-62-E1 of the Regulations of the Connecticut State Agencies.

6. Section 31-62-E2 defines "restaurant occupation" to include "all persons engaged in the preparation and serving of food for human consumption, or in any operation incidental or supplemental thereto irrespective of whether the food is served at or away from the point of preparation, and irrespective of whether the preparation and serving of food is the sole business of the employing establishment or enterprise, with the exception that this definition shall not include the preparation and serving of food in a non-profit educational, charitable or religious organization where the food service is not regularly available to the general public, or the preparation and serving of food in hospitals, convalescent homes or homes for the elderly where the food service is not regularly available to the general public and is incidental to the care of the patient." This definition further states: "This occupation includes but is not limited to employees of ...pizzerias." Section 31-62-E2(a) of the Regulations of the Connecticut State Agencies.

7. Section 31-62-E2(b) defines "Restaurant employee" as "any person who is employed or permitted to work in any restaurant occupation, establishment or enterprise." § 31-62-E2(b) of the Regulations of the Connecticut State Agencies.

8. Section 31-62-E2(c) defines "service employee" to mean: "any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. For the purpose of this order, a person shall not be considered to customarily receive gratuities unless a minimum of ten dollars per week in gratuities is received in the case of full-time employees, or two dollars per day in the case of part-time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer."

9. Section 31-62-E2(d) defines "non-service employee" to mean "an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above."

10. Section 31-62-E4 addresses the situation where employees are "diversified" within the restaurant industry. Specifically, it states, "[i]f an employee performs both service and non-service duties, and the time spent on each is definitely segregated and so recorded, the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked in the service category. If an employee performs both service and non-service duties and the time spent on each cannot be definitely segregated and so recorded, or is not definitely segregated and so recorded: no allowances for gratuities may be applied as part of the minimum fair wage." Section 31-62-E4 of the Regulations of the Connecticut State Agencies.

11. Sections 3101 and 3111 of the Internal Revenue Code impose FICA taxes on employees and employers, respectfully, equal to the percentage of the wages received by an

individual with respect to employment. 26 U.S.C. §§ 3101, 3102, 3111. FICA taxes consist of social security and Medicare taxes. Id. Section 3121(a) of the Internal Revenue Code defines "wages" for FICA tax purposes as all remuneration for employment, with certain exceptions. Section 3121(a)(12)(A) excludes from the definition of wages "tips paid in any medium other than cash"; section 3121(a)(12)(B) excludes "cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more." 26 U.S.C. § 3121(a)(12)(A) and (B) (emphasis added). Thus, where a food delivery driver receives cash tips in excess of $20 per month, those tips are subject to the employer's portion of Medicare and social security. Id.

12. Conn. Gen. Stat. § 31-255(a), which deals with employer unemployment compensation contributions, states that "[e]ach contributing employer who is subject to this chapter shall pay to the administrator contributions, which shall not be deducted or deductible from wages, at a rate which is established and adjusted in accordance with the provisions of section 31-225a, stated as a percentages of the wages paid by said employer with respect to employment." For purposes of Conn. Gen. Stat. § 31-255(a), "[w]henever tips or gratuities are paid directly to an employee by a customer of an employer, the amount thereof which is accounted for by the employee to the employer shall be considered wages." Conn. Gen. Stat. § 31-222(2)(E). Thus, where a food delivery driver receives cash tips, those tips are considered wages subject to unemployment compensation contributions.

13. Petitioner is a Connecticut corporation which operates two (2) Domino's franchises within the state of Connecticut at the following locations: 551 Route 12, Groton, CT 06340 and 242 Greenmanville Road, Mystic, CT 06355.

14. Petitioner's Domino's franchises engage in the business of preparing and delivering pizza and other food items to customers' homes.

15. The Petitioner's franchise in Groton employs approximately 28 delivery drivers and the Mystic location employs approximately 12 drivers, for a total of approximately 40 delivery drivers. These delivery drivers deliver the food items to the customers' homes. The food is prepared by employees, or "insiders." Insiders generally do not perform driving/delivery duties for the Petitioner.

16. Delivery drivers are tipped by customers in two manners; namely, by credit card or by cash tendered directly to the driver at the time of delivery. Delivery drivers are instructed to report their cash tips through an electronic system. When the drivers cash out at the end of the night, they are required to log into the password protected system and confirm the amount of tips earned during their shifts. Petitioner includes such payment in the employee's wages for the week. All reported tips are subject to applicable federal and state tax withholdings. Moreover, the petitioner pays its employer portion of any requisite payroll taxes based upon all wages, including tips that are reported.

17. Sometimes, delivery drivers perform non-delivery functions for the Petitioner. Petitioner is able to track the time that delivery drivers are performing delivery functions and separately track the time the drivers are performing non-driving duties for Petitioner, such as when employees are spending time performing non-driving duties. Petitioner is easily able to segregate the time performed in the diversified capacities as required by Section 31-62-B4 of the Regulations of the State of Connecticut.

18. Attached hereto as Exhibit A is a six month sample of redacted payroll records from January 1, 2013 through June 30, 2013. Each name and employer assigned employee

number has been redacted and each employee has been assigned a number indicated in black marker so as to maintain the privacy of the employees. The records reflect the position held by the employee. Specifically with respect to drivers, their time has been segregated by "Driver Inside Wages" denoting time spent by drivers inside the store and "OTR Wages" which denotes the time spent by drivers "on the road." As can easily be seen by the tips that have been reported to the Petitioner (See redacted payroll records attached hereto as Exhibit A), delivery drivers customarily and regularly receive gratuities well in excess of ten (10) dollars per week, as required by the definition of service employees pursuant to Section 31-62-E2(c) of the Regulations of the Connecticut State Agencies. Payroll records are attached hereto as Exhibit A. An analysis of these records revealed that the average tip per hour earned by Domino's deliver drivers while "on the road" is in excess of $10.00 per hour. When added to the current minimum wage, delivery drivers receive an average hourly wage of approximately $18.25 for their time spent "on the road." This figure is well above the minimum wage.

19. Nothing in the statute or the regulations specifically exclude delivery drivers from the reduced minimum wage, unlike bartenders which were expressly treated differently within the statute and regulations. While the regulations define "service employees," it is only the Connecticut Department of Labor's Guide for Restaurant Employers in Connecticut that expressly states that an employer may only pay a reduced minimum wage to service employees; the regulations do not state such. Moreover, because the reported tips of the Petitioner clearly reflect that a reduced minimum wage would still ensure an hourly wage well in excess of the minimum wage. Further, in light of Petitioner's obligations to pay the employers portion of required wage withholdings and unemployment compensation taxes on the tips, the exclusion of delivery drivers from a reduced minimum wage defies logic. Petitioner is requesting that the

regulations be interpreted to permit employers of delivery drivers to pay a reduced minimum wage for delivery drivers, as restaurants are permitted to do in the case of waiters and waitresses.

20. In the event the Department of Labor concludes that delivery drivers do not fall within the regulation permitting their employers to take a tip credit, Petitioner is hereby requesting that the regulation be amended or that a new regulation be promulgated to include delivery drivers within the definition of "service employees," thereby enabling employers of these employers to pay a reduced minimum wage as a tip credit given the nature of their duties and the amount of tips that are reported.

21. Neighboring states, to name a few: New York (N.Y. COMP. CODES R. & REGS. tit. 12 §§ 146-1.3, 146-2.9,146-3.3); New Jersey (N.J. ADMIN. CODE §§12:56-14.1, 12:56-14.2, 12:56-14.4), Massachusetts (455 MASS. CODE REGS. 2.01, 2.02(2)), New Hampshire (N.H. REV. STAT. ANN. §§ 279:21; N.H. CODE ADMIN. R. Lab. 802.14) and Pennsylvania (43 P.A. CONS. STAT. ANN. §333.103(d)) permit employers to take a tip credit for delivery drivers.

22. A regulation, statute or interpretive guidance which treats delivery drivers differently from waiters and waitresses violates Petitioner's right to equal protection and substantive due process under the state and federal constitution. See Conn. Const. Art. I, §§ 8, 20; 14th and 5th Amendments to the United States Constitution.

23. With respect to a substantive due process, although great constitutional deference is afforded to the legislature, the Connecticut state due process clause mandates that the legislature must limit the exercise of its police powers to preserving the public peace, health and morals. In examining the constitutional aspect of police legislation is to decide whether the purpose of the legislation is designed to accomplish that purpose in a fair and reasonable way. Pierce v. Albanese, 144 Conn. 241, 249 (1956). Even under this less exacting test of constitutionality, an

economic regulation will survive a substantive due process test only if it is both rational and related to a legitimate state purpose. Campbell v. Bd. Of Educ., 193 Conn. 93, 105 (1984). If an enactment meets this test, it satisfies the constitutional requirements of due process. Schwartz v. Kelly, 140 Conn. 176, 179 (1953). Moreover, in the instant case, the legislature has made no reference to any exclusion of food delivery drivers and contemplates that certain employees in the restaurant occupation regularly receive gratuities. It is the Department of Labor's interpretation of the statue which is in issue.

24. Where a statute, a regulation or the Agency's interpretation of the regulation is challenged on equal protection grounds, the classification must be rationally related to some legitimate government purpose in order to withstand such constitutional challenge, whether under the state or federal constitutions. Batte-Holmgren v. Commissioner of Public Health, 281 Conn. 277, 295 (2007). In determining whether the challenged classification is rationally related to a legitimate public interest, where there is no plausible policy for the classification, rational basis review is not satisfied. Harris v. Commissioner of Correction, 271 Conn. 808, 834 (2004).

25. In the case of Back Bay Restaurant Group v. State Dep't of Labor, 2001 Conn. Super. LEXIS 2440 (Sup. Ct. JD of New Britain, Aug. 14, 2001) (attached hereto as Exhibit B), Judge Cohn addressed the constitutionality of the tip credit as it distinguished between the bartenders and the wait staff under the equal protection clause. In that case, the Department's declaratory ruling gave the following reasons for the distinction between the wait staff and bartenders: "It must be noted that the actual duties incidental to each type of service vary considerably. In contrast to 'service' employees, bartenders engaging in 'non-service' duties are responsible for the setup, maintenance and upkeep of the bar, the stocking of the bar with adequate supplies of alcoholic and non-alcoholic beverages, and the preparation of beverages to

adequate supplies of alcoholic and non-alcoholic beverages, and the preparation of beverages to be served to patrons. These duties materially differ from the duties performed by their 'service' employee counterparts, and justify the distinction created by the regulations at issue in this declaratory ruling." Id. at * 19-20. Moreover, Back Bay went on to say, "On the specific issue of the bartender who also serves meals, the Department stated in the declaratory ruling, 'There is also a noteworthy distinction in terms of gratuity compensation for bartenders and waitstaff who are engaged in the same 'service' duties to patrons seated at 'tables or booths.' Generally, gratuities from these patrons are provided directly to waitstaff rather than to the individual bartenders who prepare the beverages. As a result, bartenders do not receive an amount of gratuities which is comparable to their 'service' employee counterparts for the same type of 'service' employee duty. The decreased opportunity for gratuities from patrons seated at 'tables or booths' provides additional justification for the regulatory prohibition on payment of less than minimum wage to bartenders." Id. at * 19-21.

26. In the Back Bay case, there was clear legislative history indicating an intent to distinguish between waitstaff and bartenders. Id. * 8-16. In the instant matter, there is no such indication. Moreover, there is no rational basis for the Department to exclude delivery drivers from the definition of service employees. Certainly, delivery drivers, just like waitstaff, are delivering food to patrons. Delivery drivers simply deliver the food to patrons at their homes instead of delivering them to tables within the restaurant. Unlike bartenders, tips are provided directly to the delivery drivers for the service work that they perform. The Petitioner is able to clearly distinguish on the road time versus non-delivery time and take a tip credit for only the time traveling and delivering. Moreover, because the delivery driver must be reimbursed for travel expenses, in accordance with Section 31-62-B10 of the Regulations of the Connecticut

State Agencies, the fact that travel is involved is of no distinction in this context. The nature of the type of service that is being performed is similar in nature. Moreover, the delivery drivers are regularly and customarily receiving approximately $10.00 per hour in tips, well in excess of the $10/month that the statue contemplates. Finally, restaurant employers, like Petitioner, is required to factor tips as wages in their unemployment contributions as well as federal FICA contributions. Because there is no rational basis for any such distinction, any such distinction would not survive constitutional scrutiny, whether under the equal protection or substantive due process clauses. See Fair Cadillac-Oldsmobile Isuzo Partnership v. Bailey, 229 Conn. 312 (1994)(statute prohibiting a party engaged in the business of selling motor vehicles from selling them on Sunday violated substantive due process clause of Connecticut constitution, concluding that even though the legislature acted arbitrarily or irrationally).

27 For the foregoing reasons, the Petitioner respectfully requests that the Agency declare that Petitioner's delivery drivers fall within the definition of service employee and permit the Petitioner to pay the same reduced minimum wages which are paid to wait staff who regularly and customarily receive gratuities or amend or promulgate a new regulation permitting Petitioner to do so.

PETITIONER,

By _____

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(860) 748-4660
(860) 241-1547
Juris No: 426943
Attorneys for Petitioner

CERTIFICATION

This is to certify that a copy of the foregoing has been sent to the following, via the United States Postal Service, First Class Mail, postage prepaid, this 16th day of October, 2013 to the following individuals who may be affected by this decision, namely current delivery drivers employed by the Petitioner.

James Kulp
101 Michagin Road
Groton, CT 06340

Carlos Amaral
20 C Apache Drive
Westerly, RI 02891

Mathew Rode
8 Robinhood Drive
Gales Ferry, CT 06335

Christopher Kulp
101 Michigan Drive
Groton, CT 06340

William Sharpe
14 Bristol Street
Apt. 8
New London, CT 06320

William Day
11 High Street
Apt. 10
Groton, CT 06340

Seth Roberts
1 Minor Street
Pawcatuck, CT 06379

Cornelius Donnel
29 Allyan Street
Mystic, CT 06355

Nina Finocchiaro
109 Lamphere Road
Mystic, CT 06355

Justin Dent
350 Chesterfeild Road
Oakdale, CT 06370

Alan Anderson
42 Blueberry Hill Road
Groton, CT 06340

Shaun Henry
25 Quaker Town
Mystic, CT 06355

Caleb Lincoln
19 High Street
Chester, CT 06412

David Smith
26 Harris Fuller Road
Preston, CT 06365

Jason Calmes
14 Crabapple Lane
Groton, CT 06340

Katherine Calmes
14 Crabapple Lane
Groton, CT 06340

Keith Fenton
30 Greenwood Street
Groton, CT 06340

Jason Fife
17 Ann Street
Norwich, CT 06360

Brian Fox
P.O. Box 613
Gales Ferry, CT 06335

Crystal Garcia
45 South Road
Apt. 11A
Groton, CT 06340

Gage Hathaway
63 Magnolia Drive
Groton, CT 06340

Jeffrey Hughes
202 Deerfield Ridge Road
Mystic, CT 06355

Elias Kauders
45 South Road
Apt. 11A
Groton, CT 06340

Darcie Laflamme
48 Hornbeam Road
Groton, CT 06340

Bruce Lichtenwalter
111 Ledgewood Road
Apt. #102
Groton, CT 06340

Vladimir Martinez
62 Case
Norwich, CT 06360

Thomas McAvoy
14 Seabury Avenue
Ledyard, CT 06339

Benjamin McMullin
32 Burningtree Drive
Groton, CT 06340

Therese Mpyanga
P.O. Box 5537
Groton, CT 06340

Kenny Munroe
31 Florida
Groton, CT 06340

Jamie Nelson
48 Raintree Circle
Groton, CT 06340

Karrielyn Owsiany
365 Burningtree Drive
Groton, CT 06340

Scott Pannell
8 Maple Avenue
Mystic, CT 06355

Thomas Ruggieri
91 Buddington Road
Groton, CT 06340

Ethan Sasportas
Mohegan Park Road
Lot 12
Norwich, CT 06360

Jessica Starkey
58 Warner Street
Groton, CT 06340

Greg Sykes
67 Ohio Avenue
Groton, CT 06340

Courtney Vancuren
5 Greenpoint Street
Ledyard, CT 06339

Alan Wallis
90 Arrowwood Drive
Groton, CT 06340

Norma Walters
968 Long Cove Road
Gales Ferry, CT 06335

Tim Welsh
45 Cindy Lane
Mystic, CT 06355

ROBIN B. KALLOR

STATE OF CONNECTICUT

DEPARTMENT OF LABOR

In the Matter of:

AMARAL BROTHERS PIZZA, LLC

PETITIONER

APRIL 11, 2014

VS.

STATE OF CONNECTICUT, DEPARTMENT OF LABOR

DECLARATORY RULING

APPEARANCES:

FOR THE PETITIONER, AMARAL BROTHERS PIZZA, LLC:

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Robin B. Kallor, Esq.
Rose Kallor, LLP
750 Main Street, Suite 606
Hartford, CT 06103

BACKGROUND

I. THE PETITION:

On October 18, 2013, Amaral Brothers Pizza, LLC, ("Petitioner") filed a petition for a declaratory ruling with the Labor Commissioner pursuant to Conn. Gen. Stat. §§ 4-174 and 4-176, and § 31-1-11 *et seq.* of the Regulations of Connecticut State Agencies. (See Exhibit A, attached.) The petition seeks a declaratory ruling regarding the validity[1] and applicability of §§ 31-62-B1, 31-62-B2 and 31-62-B3 to the circumstances of pizza delivery drivers so as to classify such drivers as "service employees" within the meaning of Conn. State Agencies Regs. § 31-62-B2(c) employed in the "restaurant industry" per Conn. Gen. Stat. § 31-60(b). If such drivers were to be so classified, Petitioner would be able to be compensate the drivers at a reduced minimum wage for the hours in which they were engaged in delivery duties on the basis that Petitioner would qualify for a "tip credit" toward the minimum wage for the amount of gratuities customarily paid to such drivers in the course of their duties in accordance with § 31-60(b).

II. NOTICE:

On December 16, 2013, the Labor Commissioner published notice of her intent to issue a declaratory ruling to the petitioner and to all interested persons of record pursuant to Conn. State Agencies Regs. § 31-1-16(a).

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[1] Although on page one of its petition, the Petitioner clearly "seeks a declaratory ruling regarding the *validity* and applicability of the [CTDOL's] Regulations..." (emphasis supplied), it does not appear that Petitioner is challenging the validity of the regulations as much as the CTDOL's interpretation of such regulations which bars the Petitioner from considering gratuities as part of the minimum wage for pizza delivery drivers.

III. FACTS:

Based on the petition, the following facts are set forth:

1. The "minimum fair wage" in Connecticut is defined by Section 31-58(i) "...effective January 1, 2014, [as a wage] not less than eight dollars and seventy cents per hour, and effective January 1, 2015, not less than nine dollars per hour or one-half of one per cent rounded to the nearest whole cent more than the highest federal minimum wage, whichever is greater...[2]

2. Section 31-60(b) of the Connecticut General Statutes requires the Department of Labor to adopt regulations recognizing certain gratuities as part of the minimum wage. Specifically, this section of the statute provides in relevant part:

> The Labor Commissioner shall adopt such regulations... as may be appropriate to carry out the purposes of this part. Such regulations... shall recognize, as part of the minimum fair wage, gratuities in an amount (1) equal to twenty-nine and three-tenths per cent, and effective January 1, 2009, equal to thirty-one per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to thirty-four and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to thirty-six and

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[2] On March 27, 2014, Governor Malloy signed P.A. 14-1 making the following language effective July 1, 2014:

> ...effective January 1, 2014, not less than eight dollars and seventy cents per hour, and effective January 1, 2015, not less than nine dollars and fifteen cents per hour, and effective January 1, 2016, not less than nine dollars and sixty cents per hour, and effective January 1, 2017, not less than ten dollars and ten cents per hour or one-half of one per cent rounded to the nearest whole cent more than the highest federal minimum wage, whichever is greater...

> eight-tenths per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry... who customarily and regularly receive gratuities...

2. Pursuant to Conn. Gen. Stat. § 31-60, the Connecticut Department of Labor promulgated Regulations § 31-62-B1 *et seq.* entitled *Minimum Fair Wage Rates for Persons Employed in the Restaurant and Hotel Restaurant Occupations.*

3. Subsection (a) of Section 31-62-B2 provides that the term "restaurant occupation" includes " employees of ... pizzerias..."

4. Section 31-62-E2(b) defines "restaurant employee" as "any person who is employed or permitted to work in any restaurant occupation, establishment or enterprise."

5. Subsections (c) and (d) of Section 31-62-B2 distinguish a "service" employee from a "non-service" employee. A "service" employee is defined as "any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities..." 31-62-B2(c). A "non-service" employee is defined as "an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverages to patrons at tables or booths.

and who do not customarily receive gratuities as defined above." 31-62-B2(d).

6. Pursuant to conditions set forth in Conn. State Agencies Regs. § 31-62-E-3, an employer may recognize as part of the minimum wage, gratuities received by an employee up to thirty-four and six-tenths per cent (34.6%) of the minimum fair wage effective January 1, 2014.

7. Pursuant to Conn. State Agencies Regs. § 31-62-E4, "...the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked in the service category." The regulation affords no recognition or credit toward the minimum fair wage with respect to gratuities received by a non-service employee.

8. In a *Guide for Restaurant Employers in Connecticut*, formerly published by the Connecticut Labor Department,[3] the typical duties of a "service" employee were delineated as follows:

   (a) Taking food and beverage orders from patrons.

   (b) Bringing the orders to the table or booth.

   (c) Cleaning up the immediate area of service.

   (d) Filling the condiment containers at the tables or booths.

   (e) Vacuuming their own immediate service area.

   (f) Replacing the table setting at their own service area.

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[3] The Wage and Workplace Standards Division ceased publication of the *Guide* in 2006. It was acknowledged that the *Guide* did "not take the place of actual Connecticut General Statutes and regulations and/or court decisions." *See A Guide for Restaurant Employers in Connecticut* at 1, ¶ 6.

9. The *Guide for Restaurant Employers in Connecticut* also described the typical duties of a "non-service" employee as follows:

(a) Cleaning the rest rooms.

(b) Preparing food.

(c) Washing dishes.

(d) Host or hostess work.

(e) General set-up work before the restaurant opens.

(f) Kitchen clean-up.

(g) General cleaning work.

(h) Waiting on takeout customers.

10. Petitioner is a Connecticut corporation which operates two (2) Domino's pizza franchises in Connecticut located at 551 Route 12, Groton, CT 06340, and 242 Greenmanville Road, Mystic, CT 06355. Each franchise consists of a restaurant that engages in the business of cooking and preparing pizza and other food items for delivery to the homes of customers.

11. The Petitioner employs approximately forty (40) employees who work in the capacity of a delivery driver. The duties of a delivery driver consist of delivery and non-delivery functions. While engaged in delivery functions, such employees deliver food items to customers' homes in vehicles owned and maintained by the employees. The Petitioner reimburses each delivery driver for travel expenses in

accordance with Conn. State Agencies Regs. § 31-62-B10.[4]

12. While not engaged in delivery functions, such employees perform tasks of a non-service nature inside the Petitioner's facility that are not specified in the petition but are unrelated to driving or the delivery of food items to customers' homes.

13. The Petitioner is able to segregate the time that delivery drivers engage in delivery functions ("OTR" – "on the road") from the time that such employees engage in non-delivery functions ("Driver Inside Wages" – "DIW"). While engaged in OTR functions, delivery drivers may receive tips in the form of cash or credit card payments. The Petitioner directs such drivers to report all tips earned in the course of their shift on an electronic system maintained by the employer for this purpose.

IV. ISSUE:

WHETHER CONN. STATE AGENCIES REGS. §§ 31-62-E1, 31-62-E2, 31-62-E3 AND 31-62-E4[5] AS INTERPRETED BY THE CTDOL SHOULD BE

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[4] Section 31-62-B10 of the Connecticut State Agencies Regulations provides:

> Any employee who is required or permitted to travel from one establishment to another after the beginning or before the close of the work day, *shall be compensated for travel time at the same* rate as for working time, and *shall be reimbursed for the cost of transportation.*

(Emphasis added.)

[5] Although the petition does not specifically reference the invalidity or inapplicability of § 31-62-E4, the CTDOL incorporates this regulation into its analysis.

DECLARED INVALID TO THE EXTENT THAT THEY DO NOT APPLY TO PIZZA DELIVERY DRIVERS EMPLOYED BY THE PETITIONER WHO DELIVER FOOD ITEMS TO THE HOMES OF PETITIONER'S CUSTOMERS, THEREBY DENYING PETITONER THE MINIMUM WAGE TIP CREDIT AFFORDED BY CONN. GEN. STATUTE § 31-60(b) FOR PERSONS EMPLOYED IN THE HOTEL AND RESTAURANT INDUSTRY?

V. DISCUSSION:

Subsection (b) of section 31-60 of the Connecticut General Statutes, as amended by Public Act No. 13-117, provides in relevant part:

> The Labor Commissioner shall adopt such regulations... as may be appropriate to carry out the purposes of this part. *Such regulations... shall recognize, as part of the minimum fair wage, gratuities in an amount* (1) equal to twenty-nine and three-tenths per cent, and effective January 1, 2009, equal to thirty-one per cent of the minimum fair wage per hour, and *effective January 1, 2014, equal to thirty-four and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to thirty-six and eight-tenths per cent of the minimum fair wage per hour for persons*, other than bartenders, who are *employed in the hotel and restaurant industry... who customarily and regularly receive gratuities...*

(Emphasis supplied.)

Pursuant to this statutory provision, the Connecticut Department of Labor promulgated Conn. State Agencies Regs. § 31-62-B2, which provides in relevant part:

(c) "Service employee" means any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. For the purpose of this order, a person shall not be considered to customarily receive gratuities unless a minimum of ten dollars per week in gratuities is received in the case of full-time employees, or two dollars per day in the case of part-time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer.

(d) "Non-service employee" means an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above.

. . .

It is the Petitioner's contention that the Labor Commissioner's interpretation of Conn. State Agencies Regs. § 31-62-B2(c) and (d) so as to exclude pizza delivery drivers from the definition of "service" employees within the meaning of Conn. State Agencies Regs. § 31-62-B2(c) is invalid and arbitrary, and contravenes the purpose of the enabling statute, Conn. Gen. Stat. § 31-60(b). Specifically, the

Petitioner claims that there is no rational basis[6] for the CTDOL to exclude pizza delivery drivers from the definition of service employees because the nature of the type of OTR delivery services being performed by such drivers is similar in nature to that of service employees otherwise employed in a restaurant occupation, i.e., waitstaff, except for the fact that such deliveries do not entail serving food items to patrons seated at tables or booths within the confines of a restaurant. *See* Petition for Declaratory Ruling, October 16, 2013, at 10-11. As a consequence of the CTDOL's interpretation excluding delivery drivers from the definition of "service employee" within the meaning of Conn. State Agencies Regs. § 31-62-B2(c), the Petitioner claims it is not permitted to avail itself of the thirty four and six tenths per cent (34.6%) tip credit for the purposes of satisfying the minimum wage paid to said delivery drivers while they are performing OTR functions. For the reasons which follow, the CTDOL concludes that there is no merit to the Petitioner's contentions, and that it has presented insufficient evidence for the CTDOL to declare the regulations at issue invalid on the basis that the CTDOL interprets said regulations to be inapplicable to pizza delivery drivers employed by the Petitioner because they do not meet the definition of "service employees" within the meaning of such regulations.

At the outset, it is noteworthy that the particular regulations at issue in this petition have been the subject of previous legal challenges without success. *See Back Bay Restaurant Group, Inc. v. State of Connecticut Department of Labor*, 2001 WL 1042594 (8/14/01); *State of Connecticut, Department of Labor v. America's Cup, et al.*, 1994 WL 162415, (4/15/94); and *Rising Sun*

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[6] To the extent that Petitioner raises equal protection and other constitutional arguments, (*see* Petition for Declaratory Ruling, October 16, 2013, at 8 – 10), the CTDOL expressly declines to rule on these issues. As a general rule, administrative agencies do not have the power to decide the constitutionality of statutes. 73 *C.J.S. Pub. Admin. Law and Proc.* Section 65. Only the courts have authority to take action which runs counter to the expressed will of the legislative body. *Public Utilities*

Enterprises, Inc. v. Frank Santaguita, Commissioner, Superior Court, Judicial District of Hartford, Docket No. 132588 (April 6, 1979, Graham, J.). With respect to the agency's authority to issue the regulations, the court has ruled:

> Section 31-60(b), both as originally drafted in 1951 and in its present form, authorizes the Labor Commissioner to issue regulations recognizing gratuities in the hotel and restaurant industry. It was within this broad delegation of power for the commissioner to issue the regulations defining service and non-service employees.

Back Bay Restaurant Group, Inc. v. State of Connecticut Department of Labor, supra at 4.

In assessing the merits of the instant petition, the CTDOL is mindful that "[t]he minimum wage law... should receive a liberal construction as regards beneficiaries so that it may accomplish its purpose. *State of Connecticut, Department of Labor v. America's Cup, et al., supra, quoting Shell Oil Co. v. Ricciutl*, 147 Conn. 277, 283 (1960). The primary purpose of the minimum wage law is "to require the payment of fair and just wages [and like] our workmen's compensation and unemployment compensation laws, the minimum wage law should receive a liberal construction in order that it may accomplish its purpose." *Muffler Shop of East Hartford, Inc. v. Department of Labor*, No. CV 90 332678, 1990 WL 269179 (Conn. Super. July 29, 1990) at 3, *quoting West v. Egan*, 142 Conn. 437, 442 (1955).

The legislative history of the minimum wage statutes is consistent with the purpose of the statutes, which is to protect the sanctity of the wages earned by an employee pursuant to the employment agreement. As then Senator Nancy Johnson commented, in her support of an amendment to General Statutes §31-72 providing employees with a private cause of action if an employer fails to pay their

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Commission v. United States, 355 U.S. 534, 539 (1958); *Caldor Inc. v. Thornton*, 191 Conn. 336 (1983).

accrued wages: "The payment of earned wages is a [basic] right that should be assured by clear, strong state statutes... A person must be able to count on his or her paycheck-- that [it] will be forthcoming ..." Conn. Joint Standing Committee Hearings, Labor and Industrial Relations, 1978 Sess., pp. 154-55. This remedial purpose is no less applicable to the "rules and regulations adopted by an administrative agency under its delegated authority to implement those laws." ***Rising Sun Enterprises, Inc. v. Frank Santagulta, Commissioner, supra.***

A Petitioner seeking to declare a regulation by an administrative agency or its application invalid, faces a heavy burden. ***Rising Sun Enterprises, Inc., supra.*** The burden of proof rests on the Petitioner to establish that its employees come within an exemption and "it is essential that exemptions or exclusions be strictly and narrowly construed." ***Muffler Shop of East Hartford, Inc., supra*** at 3, ***quoting Shell Oil Company v. Ricciuti***, 147 Conn. 277, 283 (1960).

Upon reviewing the instant petition in its entirety, the CTDOL understands Petitioner to be arguing that its delivery drivers are "service" employees within the meaning of the regulations at all times in which they are performing OTR duties. In order to address this contention, the CTDOL concurs with Petitioner that the crucial inquiry in determining whether the Petitioner is entitled to pay less than the full minimum wage to pizza delivery drivers must focus on the actual OTR duties performed by such drivers.[7] In its petition, the Petitioner contends that in regard to the OTR duties performed while traveling and delivering, "the nature of the type of service that is being performed [by such drivers] is similar in nature [to that performed by "service" employees like waitstaff]. *See* Petition at 10-11, ¶

[7] The Petitioner does not dispute paying the full minimum wage to drivers while employed inside the employer's premises performing "DIW" functions. The Petitioner has the ability to segregate time spent by delivery drivers between "OTR" and "DIW" functions, and is willing to make separate payments and keep separate records depending on the nature of the duties

26. The CTDOL disagrees for the reasons which follow.

In the first instance, all of the OTR duties performed by delivery drivers do not meet the definition of "service employee" as stated in § 31-62-E2(c). While the drivers are clearly not delivering food to "patrons seated at tables or booths,"[8] the CTDOL finds that the regulation is inapplicable primarily because the majority of the specific duties performed by the drivers do not relate "*solely* to the serving of food... and to the performance of duties incidental to such service..." within the meaning of the regulation. (Emphasis supplied.)

On the basis of the evidence presented, the CTDOL determines that only the solitary act of transferring possession of food items from a driver's vehicle to a customer at the doorway of a home is analogous to the plain language meaning of the term "serving of food" that is contemplated by §31-62-E2(c). Outside of this narrow window, all other duties performed prior to and immediately after that solitary act cannot be properly characterized as "service" duties because they do not "relate *solely* to the serving of food and/or beverages." Although Petitioner does not describe in detail the extent of OTR activities, it nonetheless makes the generalized argument that all OTR duties are of a "service" nature. *See* Petition for Declaratory Ruling, October 16, 2013, at 6-7, ¶ 17 and 18. In the absence of specific evidence to corroborate this contention, the CTDOL must reject this underlying premise. The CTDOL finds that delivery drivers perform several duties of a "non-service" nature before and after the solitary act of delivering the food item to the customer. Specifically, in the process of transporting food items from the Petitioner's premises to the customer's home in the

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performed by the drivers.

[8] The CTDOL concludes that the mere location to which such food items are delivered has less meaningful legal significance to this analysis than the nature of the "service" being provided by such employees.

employee's personal vehicle, it is incumbent on the driver to: (1) possess a valid motor vehicle operator's license; (2) ensure the maintenance and operational readiness of the personal vehicle; (3) be attentive to motor vehicle laws, road and weather conditions; (4) obtain accurate directions to the destination; and (5) be able to communicate with the employer remotely – all of which bears no reasonable relationship to the serving of food. On their face, these duties differ materially from the nature of the "service" performed by traditional waitstaff serving food to patrons within the confines of a restaurant. Accordingly, with the exception of the solitary act of transferring possession of the food item to the customer, the CTDOL cannot conclude that any of the other OTR duties performed by the drivers in the course of delivery constitutes a duty solely relating to the serving of food within the meaning of §§ 31-62-B2(c).

In addition, the duties incidental to the OTR activities vary substantially from those of a traditional "service" employee. In contrast to waitstaff who establish a rapport with the restaurant customer by taking the initial order, providing status updates of the order, checking periodically on customer satisfaction, and cleaning up the immediate area, the delivery driver engages in no such interaction incidental to "service" to the customer beyond the exchange of payment at the time of making the delivery. Because the interaction between the driver and the customer is minimal in duration and quality, it is concluded that the OTR functions possess none of the characteristics customarily associated with the complement of services provided by waitstaff in a restaurant.

Finally, there is also a noteworthy distinction in terms of the opportunities available to delivery drivers on which to earn gratuities. Unlike their service employee counterparts in restaurants, who are able to earn gratuities by servicing multiple tables simultaneously, delivery drivers have a decreased

opportunity to receive gratuities due to the fact that deliveries are by their nature made in consecutive order. While waitstaff may potentially earn gratuity income from multiple customers in the course of a given hour, a delivery driver derives gratuities solely from a single customer at a time due to the "piece meal" manner in which orders are received and delivered. Moreover, delivery drivers do not have a continuous stream of customers upon which to rely for income. In contrast to waitstaff, who can perform their duties on a continuous basis even when not at full capacity, the delivery driver is able to make only the allotted amount of deliveries before having to return to the restaurant for additional assignments. During the time spent returning to the restaurant, there is no potential for gratuity income to be earned by the delivery driver. Under these circumstances, the decreased opportunity for gratuities for delivery drivers provides additional justification for the regulatory prohibition on the payment of less than the minimum wage to such drivers.

Accordingly, based on the review of Conn. Gen. Stat. § 31-60 (b), Conn. State Agencies Regs. § 31-62-E1 *et seq.*, case law and the instant petition, it is the conclusion of the CTDOL that the regulations at issue in this ruling are not invalid as interpreted by the CTDOL as they apply to pizza delivery drivers because the Petitioner has not met its high burden of proving: 1) that all of the OTR duties performed by or incidental to the performance of delivery drivers relate solely to the serving of food as required by the regulatory definition of "service employee;" and 2) that there is no rational basis for the regulatory distinction between "service" employees and pizza delivery drivers.

VI. DECLARATORY RULING:

Pursuant to Section 4-176 of the Connecticut General Statutes and on the basis of the record established in proceedings conducted pursuant to Conn. State Agencies §§ 31-1-11 to 31-1-16, inclusive, I hereby issue the following declaratory ruling:

(1) Sections 31-62-B1 *et seq.* of the Connecticut State Agencies Regulations are not invalid as applied by the CTDOL to pizza delivery drivers employed by the Petitioner because said drivers do not constitute "service" employees within the meaning of the regulations at all times when performing OTR duties, and there exists a rational basis for the distinction under the factual circumstances as stated in this petition.

(2) In light of the foregoing, the CTDOL expressly declines to amend or promulgate new regulations in place of Conn. State Agencies Regs. §31-62-1 *et seq.*

Dated this 11th day of April, 2014

Sharon M. Palmer
Labor Commissioner

SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19622

AMARAL BROTHERS, INC.

v.

STATE OF CONNECTICUT, DEPARTMENT OF LABOR

APPENDIX PART II

Sec. 31-60. Payment of less than minimum or overtime wage. Regulations. (a) Any employer who pays or agrees to pay to an employee less than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this part.

(b) The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesperson; learners and apprentices, their number, proportion and length of service; and piece rates in relation to time rates; and shall recognize, as part of the minimum fair wage, gratuities in an amount (1) equal to twenty-nine and three-tenths per cent, and effective January 1, 2009, equal to thirty-one per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to thirty-four and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to thirty-six and eight-tenths per cent of the minimum fair wage per hour for persons, other than bartenders, who are employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, (2) equal to eight and two-tenths per cent, and effective January 1, 2009, equal to eleven per cent of the minimum fair wage per hour, and effective January 1, 2014, equal to fifteen and six-tenths per cent of the minimum fair wage per hour, and effective January 1, 2015, equal to eighteen and one-half per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities, and (3) not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent with this section.

(c) Regulations adopted by the commissioner pursuant to subsection (b) of this section which define executive, administrative and professional employees shall be updated not later than October 1, 2000, and every four years thereafter, to specify that such persons shall be compensated on a salary basis at a rate determined by the Labor Commissioner.

(1951, S. 2034d; 1957, P.A. 435, S. 5; 1959, P.A. 683, S. 3; 1961, P.A. 519, S. 3; 1967, P.A. 492, S. 2; 1971, P.A. 616, S. 2; P.A. 73-561, S. 1, 2; 73-616, S. 29, 64, 67; P.A. 80-64, S. 1, 7; P.A. 99-199; P.A. 00-144, S. 2; P.A. 01-42, S. 2, 3; P.A. 02-33, S. 2; P.A. 03-278, S. 91; P.A. 04-68, S. 1; P.A. 08-113, S. 1; P.A. 13-117, S. 2; 13-140, S. 14; P.A. 14-42, S. 5.)

History: 1959 act extended regulatory authority to cover executive, administrative and professional employees, deleted bonuses and special pay from matters subject to regulation and established gratuity rates of $0.35 for restaurant employees and $0.30 for others; 1961 act increased gratuity rates and added "based on the actual cost of food and labor"; 1967 act raised maximum gratuities in Subsec. (b) from $0.40 per hour to $0.47 until July 1, 1968, and $0.50 thereafter for persons employed in hotel and restaurant industry; 1971 act increased gratuities limit to $0.60 per hour; P.A. 73-561 authorized deduction for board "in the amount of eighty-five cents for a full meal and forty-five cents for a full meal" rather than for "reasonable value of board, based on the actual cost of food

and labor" in Subsec. (b); P.A. 73-616 amended Subsec. (b) to add provision allowing amendment of regulations without convening a wage board and amended Subsec. (c) to delete provision specifying that regulations take effect upon publication in the Connecticut Law Journal; P.A. 80-64 made recognition of gratuities as part of minimum wage mandatory rather than optional, substituting "shall" for "may", and changed gratuity limit from $0.60 per hour to 23% of the minimum fair wage; P.A. 99-199 amended Subsec. (b) to delete provisions requiring commissioner to consult with wage board prior to adopting regulations, to require commissioner to adopt regulations in accordance with the Uniform Administrative Procedure Act and to make gender neutral changes and amended Subsec. (c) to delete provisions specifying procedure for adoption of regulations and to require that regulations defining executive, administrative and professional employees be updated by the commissioner by October 1, 2000, and every four years thereafter; P.A. 00-144 amended Subsec. (b) by making a technical change and adding provisions requiring regulations re the minimum wage for certain hotel and restaurant employees from January 1, 2001, to December 31, 2002; P.A. 01-42 amended Subsec. (b) by making a technical change, deleting existing provisions requiring regulations re the minimum wage for certain hotel and restaurant employees from January 1, 2001, to December 31, 2002, and adding provision re minimum wage regulation requirements for such employees for the periods from January 1, 2001, to December 31, 2001, and January 1, 2002, to December 31, 2002, effective May 31, 2001; P.A. 02-33 amended Subsec. (b) by deleting regulations requirement in effect from January 1, 2001, to December 31, 2001, re calculations of the minimum wage for certain hotel and restaurant employees and bartenders, by extending the expiration date of regulations requirement for certain hotel and restaurant employees and bartenders from December 31, 2002, to December 31, 2004, by adding provision re regulations' applicability to hotel and restaurant employees "who customarily and regularly receive gratuities" and by making technical changes, effective July 1, 2002; P.A. 03-278 made technical changes in Subsec. (b), effective July 9, 2003; P.A. 04-68 amended Subsec. (b) to permanently increase amount of gratuities recognized as part of minimum fair wage per hour (or "tip credit") from 23% to 29% for hotel and restaurant workers, excluding bartenders, to establish permanent tip credit of 8.2% for bartenders who customarily and regularly receive gratuities, and to delete identical temporary provisions for both categories of workers which were scheduled to sunset on December 31, 2004, effective January 1, 2005; P.A. 08-113 amended Subsec. (b) to increase amount of gratuities recognized as part of minimum fair wage per hour, effective January 1, 2009, from 29.3% to 31% for hotel and restaurant workers, excluding bartenders, and from 8.2% to 11% for bartenders who customarily and regularly receive gratuities; P.A. 13-117 amended Subsec. (b) to increase amount of gratuities recognized as part of the minimum fair wage per hour from 31% to 34.6%, effective January 1, 2014, and from 34.6% to 36.8%, effective January 1, 2015, for hotel and restaurant workers, excluding bartenders, and from 11% to 15.6%, effective January 1, 2014, and from 15.6% to 18.5%, effective January 1, 2015, for bartenders who customarily and regularly receive gratuities, effective July 1, 2013; P.A. 13-140 amended Subsec. (b) by deleting "without the necessity of convening a wage board or amending such regulations" re regulations in effect on July 1, 1973, effective June 18, 2013; P.A. 14-42 made a technical change in Subsec. (b)(2), effective May 28, 2014.

See Sec. 31-58(j) for definition of "minimum fair wage".

Cited. 140 C. 73. Constitutionality discussed. 142 C. 437. Cited. 219 C. 520; 223 C. 573.

Limited amount of gratuity allowed for minimum wage. 18 CS 452.

than two hundred dollars. (b) Any employer or the officer or agent of any corporation who pays or agrees to pay to any employee less than the rates applicable to such employee under *the provisions of this chapter or* a minimum fair wage order shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not less than ten days nor more than ninety days or be both fined and imprisoned, and each week for any day of which such employee has been paid less than the rate applicable to him under *this chapter or under* a minimum fair wage order shall constitute a separate offense as to each employee so paid. (c) Any employer, *his officer or agent,* or the officer or agent of any corporation, *firm or partnership* who fails to keep the records required under this chapter, or to furnish such records to the commissioner or * * * any authorized representative of the commissioner, upon request, *or who refuses to admit the commissioner or his authorized representative in his place of employment or who hinders or delays the commissioner or his authorized representative in the performance of his duties in the enforcement of this chapter* shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each day of such failure to keep the records required under this chapter or to furnish the same to the commissioner * * * or any authorized representative of the commissioner shall constitute a separate offense, *and each day of refusal to admit, or of hindering, or delaying the commissioner or his authorized representative shall constitute a separate offense. (d) Nothing in this chapter shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or conditions of work in excess of the applicable minimum under this chapter.*

Sec. 838b. Payment of less than minimum wage. Regulations. 1951
(a) Any employer who pays or agrees to pay to an employee less than the minimum fair wage, as defined in section 829b, shall be deemed in violation of the provisions of this chapter. (b) The labor commissioner, after consulation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such administrative regulations as may be appropriate to carry out the purposes of this chapter. Such regulations may include, but are not limited to, regulations defining and governing outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and may recognize as part of the minimum fair wage, bonuses, gratuities, special pay for special or extra work, deductions and allowances for the reasonable value of board, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the mini-

mum fair wage herein established for learners and apprentices; physically or mentally handicapped; minors under the age of eighteen years; and for such special cases or classes of cases as the commissioner may find appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. (c) Regulations of the commissioner issued pursuant to subsection (b) of this section shall be made only after publication and public hearing by the commissioner, at which hearing any person may be heard. Such regulations shall take effect upon publication in the Connecticut Law Journal as provided in sections 280 to 287, inclusive. (d) The provisions of subsection (a) of this section shall take effect January 1, 1952.

1951 Sec. 839b. Except as otherwise therein provided, sections 829b to 839b, inclusive, shall take effect July 1, 1951. Wage orders in effect or issued before July 1, 1951, shall be modified to provide a minimum fair wage of seventy-five cents per hour effective October 1, 1951, and shall thereafter remain in full force and effect until otherwise modified in accordance with the provisions of said sections.

TITLE XXX

PUBLIC HEALTH AND SAFETY

CHAPTER 181

STATE DEPARTMENT OF HEALTH

S. 3802 1951 Sec. 840b. Bureaus. Said department shall maintain laboratories and bureaus of *administration,* vital statistics, preventable diseases, sanitary engineering, *maternal and* child hygiene, public health nursing, public health instruction, venereal diseases, mental hygiene and industrial hygiene. The commissioner of health may appoint a director of each of such bureaus, who shall perform the duties of his officer under the direction and control of said commissioner.

S. 3807 1949 Sec. 841b. State laboratories. The state department of health may establish, maintain and control state laboratories to perform examinations of supposed morbid tissues, other laboratory tests for the diagnosis and control of preventable diseases, and laboratory work in the field of sanitation and research studies for the protection and preservation of the public health. Such examinations shall be made, free of expense, upon the application of licensed physicians, *licensed dentists, licensed chiropodists,* health officers or state depart-

receive gratuities shall be four dollars and seventy-four cents per hour, except during said period the minimum wage for bartenders who customarily and regularly receive gratuities shall be six dollars and fifteen cents per hour.

(b) **Minimum daily earnings guaranteed.** Any employee regularly reporting for work, unless given adequate notice the day before to the contrary, or any employee called for work in any day shall be assured a minimum of two hours' earnings at not less than the minimum rate if the employee is able and willing to work for the length of time. If the employee is either unwilling or unable to work the number of hours necessary to insure the two-hour guarantee, a statement signed by the employee in support of this situation must be on file as part of the employer's records.

(c) **Work on seventh consecutive day.** Not less than one and one-half times the minimum rate for all time worked on the seventh consecutive day.

(d) **Overtime.** Not less than one and one-half times the regular rate for all hours worked in excess of forty in any work week.

(Effective August 15, 1972; amended January 4, 2001)

Sec. 31-62-E2. Definitions

As used in sections 31-62-B1 to 31-62-E15, inclusive:

(a) "Restaurant occupation" includes all persons engaged in the preparation and serving of food for human consumption, or in any operation incidental or supplemental thereto irrespective of whether the food is served at or away from the point of preparation, and irrespective of whether the preparation and serving of food is the sole business of the employing establishment or enterprise, with the exception that this definition shall not include the preparation and serving of food in a non-profit educational, charitable or religious organization where the food service is not regularly available to the general public, or the preparation and serving of food in hospitals, convalescent homes or homes for the elderly where the food service is not regularly available to the general public and is incidental to the care of the patient.

This occupation includes but is not limited to employees of restaurants, cafeterias, that portion of hotel business involving the preparation and serving of food, commissaries, dairy bars, grills, coffee shops, luncheonettes, sandwich shops, tearooms, nightclubs, cabarets, automats, caterers, frankfurter stands, operators of food vending machines, and that portion of the business involving the serving of food in department and variety stores, drugstores, candy stores, bakeries, pizzerias, delicatessens, places of amusement and recreation, commercial and industrial establishments and social, recreational, fraternal and professional clubs which either regularly or intermittently serve food, as well as other establishments or businesses meeting the condition stated in this paragraph.

(b) "Restaurant employee" means any person who is employed or permitted to work in any restaurant occupation, establishment or enterprise.

(c) "Service employee" means any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. For the purpose of this order, a person shall not be considered to customarily receive gratuities unless a minimum of ten dollars per week in gratuities is received in the case of full-time employees, or two dollars per day in the case of part-time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer.

(d) "Non-service employee" means an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls,

counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above.

(e) "Gratuities" means a voluntary monetary contribution received by the employee directly from a guest, patron or customer for service rendered.

Sec. 31-62-E3. Gratuities as part of the minimum fair wage

Gratuities shall be recognized as constituting a part of the minimum fair wage when all of the following provisions are complied with:

(a) The employer shall be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes, and

(b) the amount received in gratuities claimed as credit for part of the minimum fair wage shall be recorded on a weekly basis as a separate item in the wage record even though payment is made more frequently, and

(c) each employer claiming credit for gratuities as part of the minimum fair wage paid to any employee shall obtain weekly a statement signed by the employee attesting that he has received in gratuities the amount claimed as credit for part of the minimum fair wage. Such statement shall contain the week ending date of the payroll week for which credit is claimed. Gratuities received in excess of twenty-three percent of the minimum fair wage established by subsection (j) of section 31-58 of the Connecticut General Statutes per hour, need not be reported or recorded for the purpose of this regulation.

(Effective August 21, 1974; amended January 4, 2001)

Sec. 31-62-E4. Diversified employment within the restaurant industry

If an employee performs both service and non-service duties, and the time spent on each is definitely segregated and so recorded, the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked in the service category. If an employee performs both service and non-service duties and the time spent on each cannot be definitely segregated and so recorded, or is not definitely segregated and so recorded, no allowances for gratuities may be applied as part of the minimum fair wage.

Sec. 31-62-E5. Employment under other wage orders

(a) Mercantile. If an employee is engaged partly in the restaurant occupation but is also engaged partly in an occupation covered by the mercantile wage order, the provisions of the mercantile wage order shall apply to the entire work period, except that, when time spent in each occupation is segregated and separately recorded, the allowance for gratuities as permitted as part of the minimum fair wage may be applied to the hours worked by an employee in the restaurant service category.

(b) Other. If an employee is engaged partly in an occupation under the restaurant wage order but is also engaged partly in an occupation covered by another wage order other than the mercantile wage order, the higher provisions of each wage order shall apply to the entire work period unless the time spent in each occupation is definitely segregated and so recorded. Where the time spent in each occupation is definitely segregated and so recorded the provisions of the applicable wage order shall apply.

Sec. 31-62-E6. Deductions and allowances for the reasonable value of board and lodging

(a) For purposes of this section, "board" means food furnished in the form of meals on a regularly established schedule. "Lodging" means a housing facility

locality an acute shortage of safe and sanitary dwellings available to persons engaged in national defense activities.

SEC. 7. The powers conferred by this act shall be in addition and supplemental to the powers conferred by any other law, and nothing contained herein shall be construed as limiting any other powers of a housing authority.

SEC. 8. This act shall take effect from its passage.

Approved June 29, 1951.

PUBLIC ACT NO. 352

AN ACT CONCERNING MINIMUM WAGES.

SECTION 1. Section 3786 of the general statutes is repealed and the following is substituted in lieu thereof: As used in this act and in sections 3790 and 3796, (a) "commissioner" shall mean the *labor* commissioner [of labor and factory inspection]; [(b) "director" shall mean the director or any deputy director of the minimum wage division, which may be set up as a separate division in the department of labor by the commissioner with a director in charge; (c)] *(b)* "wage board" shall mean a board created as provided in section 3 of this act; [(d) "sweatshop occupation" shall mean an industry, trade, business or occupation which pays to its employees an unfair and oppressive scale of wage in which persons are gainfully employed, but shall not include domestic service in the home of the employer or labor on a farm; (e) "an oppressive and unreasonable wage" shall mean a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health; (f)] *(c)* "a fair wage" shall mean a wage fairly and reasonably commensurate with the value of [the] *a particular* service or class of service rendered, and, in establishing a minimum fair wage for [any] *such* service or class of service under this act and under section 3790, the commissioner and the wage board, without being bound by any technical rules of evidence or procedure, (1) may take into account all relevant circumstances affecting the value of the services rendered, *including hours and conditions of employment affecting the health, safety and general well-being of the workers,* and (2) may be guided by such considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid, and (3) may consider the wages, *in-*

cluding overtime or premium rates, paid in the state for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards; *(d) "department" shall mean the labor department; (e) "employer" shall mean any person, corporation or association of persons acting directly or in behalf of or in the interest of an employer in relation to employees; (f) "employee" shall mean any individual employed or permitted to work by an employer but shall not include any individual employed in agriculture or in domestic service in or about a private home or an individual employed in a bona fide executive, administrative or professional capacity or an individual employed by a federal, state or municipal government or political subdivision thereof, or any individual engaged in the activities of an educational, charitable, religious or non-profit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis, or any individual subject to the provisions of the Fair Labor Standards Act, as amended; (g) "employ" shall mean to employ or suffer to work; (h) "wage" shall mean compensation due to an employee by reason of his employment; (i) "minimum fair wage" in any industry or occupation in the state shall mean a wage of not less than seventy-five cents per hour except as may otherwise be established in accordance with the provisions of this act or section 3790.*

SEC. 2. Section 3787 of the general statutes is repealed and the following is substituted in lieu thereof: The commissioner [or the director] or any authorized representative of the *commissioner* [director] shall have authority: (a) To investigate and ascertain the wages of persons employed in any [sweatshop] occupation in the state; (b) to enter the place of business or employment of any employer of persons in any [sweatshop] occupation for the purpose of examining and inspecting any and all books, registers, payrolls and other records of any such employer that in any way appertain to or have a bearing upon the question of wages of any such persons and for the purpose of ascertaining whether the provisions of this act and of section 3790 and the orders of the commissioner have been and are being complied with; and (c) to require from such employer full and correct statements in writing, when the commissioner [or the director] or any authorized representative of the [director] *commissioner* shall deem necessary, of the wages paid to all persons in his employment. The commissioner [or the director] shall have the power, *on his own motion,* and it shall be the duty of the commissioner on the petition of fifty or more residents of the state, to cause an

investigation to be made [by the director or any authorized representative of the director,] of the wages being paid to persons in any occupation to ascertain whether any substantial number of persons in such occupation is receiving *less than a fair wage* [oppressive and unreasonable wages] as defined in section 1 of this act. If the commissioner shall be of the opinion that any substantial number of persons in any [sweatshop] occupation or occupations is receiving *less than a fair wage* [oppressive and unreasonable wages] as defined in said section 1 of this act, he shall appoint a wage board as hereinafter provided to report upon the establishment of minimum fair wage rates *of not less than seventy-five cents per hour* for such persons in such occupation or occupations.

SEC. 3. Section 3788 of the general statutes is repealed and the following is substituted in lieu thereof: (a) A wage board shall be composed of not more than three representatives of the employers in any occupation or occupations, an equal number of representatives of the employees in such occupation or occupations and of not more than three disinterested persons representing the public, one of whom shall be designated as chairman. The commissioner [, after conferring with the director,] shall appoint the members of such wage board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by employers and employees in such occupation or occupations. Two-thirds of the members of such wage board shall constitute a quorum and the recommendations or report of such wage board shall require a vote of not less than a majority of all its members. Members of a wage board shall serve without pay. The commissioner shall make and establish, from time to time, rules and regulations governing the selection of a wage board and its mode of procedure not inconsistent with this act and sections 3790 and 3796. (b) A wage board shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of all books, records and other evidence relative to any matter under investigation. Such subpoenas shall be signed and issued by the chairman of the wage board and shall be served and have the same effect as if issued out of the superior court. A wage board shall have power to cause depositions of witnesses residing within or without the state to be taken in the manner prescribed for like depositions in civil actions in the superior court. (c) The commissioner shall present to a wage board, promptly upon its organization, all the evidence and information in the possession of the commissioner relating to the wages of workers in the occupation for which the wage board

was appointed and all other information which the commissioner [or the director] shall deem relevant to the establishment of a minimum fair wage for such persons. (d) Within sixty days of its organization a wage board shall submit a report, including its recommendations as to minimum fair wage standards for the persons in the occupation the wage standards of which the wage board was appointed to investigate. If its report shall not be submitted within such time, the commissioner *may reconstitute the same board or* may constitute a new wage board. (e) A wage board may differentiate and classify employments in any occupation according to the nature of the service rendered and recommend appropriate minimum fair rates for different employments. A wage board, *for the purpose of establishing a fair wage,* may *recommend overtime or part time rates, or special pay for special or extra work, deductions for board, lodging, apparel or other items or services supplied by the employer or such other conditions or circumstances as may be usual in a particular employer-employee relationship including gratuities.* [differentiate between male employees, female employees and minor employees and recommend appropriate minimum fair wage rates for each.] A wage board may also recommend minimum fair wage rates varying with localities if, in the judgment of the wage board, conditions shall make such local differentiation equitable and shall not effect an unreasonable discrimination against any locality. (f) A wage board may recommend a suitable scale of rates for [learners'] *learners* and [apprentices' rates.] *apprentices,* which may be less than the regular minimum fair wage rates recommended for experienced workers in such occupation or occupations.

SEC. 4. Section 3789 of the general statutes is repealed and the following is substituted in lieu thereof: (a) A report from a wage board shall be submitted to the commissioner, who shall, within *fifteen* [ten] days, accept or reject such report. If the report shall be rejected, the commissioner shall resubmit the matter to the same wage board or to a new wage board, with a statement of the reasons for the resubmission. If the report shall be accepted, it shall be published, together with such adminisrative regulations as the commissioner may deem appropriate, and notice shall be given of a public hearing to be held by the commissioner [or the director] not sooner than fifteen nor more than thirty days after such publication, at which all persons in favor of or opposed to the recommendations contained in such report or in such proposed regulation may be heard. (b) Within *fifteen* [ten] days after such hearing, the commissioner shall approve or disapprove the report

of the wage board. If the report be disapproved, the commissioner may resubmit the matter to the same wage board or to a new wage board. If the report be approved, the commissioner shall make an order, which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the commissioner may deem appropriate. Such administrative regulations may include, among other things, regulations defining and governing *outside salesmen;* learners and apprentices, their rates, number, proportion or length of service; piece rates or their relation to time rates; overtime or part time rates; bonuses or special pay for special or extra work; deductions for board, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances. The commissioner may provide in such regulations, without departing from the basic minimum rates recommended by the wage board, such modifications or reductions of or additions to such rates in or for such special cases or classes of cases as those herein enumerated as the commissioner may find appropriate to safeguard the basic minimum rates established.

SEC. 5. Section 3791 of the general statutes is repealed and the following is substituted in lieu thereof: Any person in interest in any occupation for which *any administrative regulation or* a minimum fair wage order has been issued *under the provisions of this act or section 3790,* who may be aggrieved by such *regulation or such* order may obtain a review of such *regulation or such* order in the superior court by filing in said court within thirty days *after the date of the publication of such regulation or order* a written petition praying that the *regulation or* order be modified or set aside. A copy of such petition shall be served upon the commissioner. In such appeal, *the commissioner shall certify and file* [there shall be certified and filed] in the court a transcript of the entire record in the proceeding, including the testimony and evidence upon which such *regulation or* order was made and the *report* [findings] of the wage board, [the director or the commissioner and the order of the commissioner.] *The* [said] findings, as to the facts, if supported by [the] evidence, shall be conclusive. *The court shall determine whether the regulation or order appealed from is in accordance with law. If the court shall determine that such regulation or such order is not in accordance with law, it shall remand the case to the commissioner with directions to modify or revoke such regulation or order, and, if necessary, to resubmit such order to a wage board with directions to take such further proceedings as shall be in*

accordance with law. If application is made to the court for leave to adduce additional evidence by any aggrieved party, such party shall show to the satisfaction of the court that such additional evidence is material, and that there were reasonable grounds for the failure to adduce such evidence before the wage board or the commissioner. If the court finds that such evidence is material, and reasonable grounds exist for the failure of such aggrieved party to adduce such evidence in prior proceedings, then the court may remand the matter to the commissioner with directions that such additional evidence be taken before such wage board or the commissioner, as the case may be. The board or the commissioner may modify its conclusions in whole or in part by reason of such additional evidence. Hearings in the superior court on all appeals taken under the provisions hereof shall be privileged and take precedence over all other matters, except matters of the same character. [The petitions filed under this section shall be heard at the session of the court next following the filing of any such petitions, and they shall be given precedence over all matters of like character.] The jurisdiction of the court shall be exclusive and its judgment and decree final, except that the same shall be subject to review by the supreme court of errors.

SEC. 6. Section 3792 of the general statutes is repealed and the following is substituted in lieu thereof: At any time after a minimum fair wage order has been in effect for *six months* [one year] or more, the commissioner may, on his own motion, [after conferring with the director,] and shall, on petition of fifty or more residents of the state, reconsider the minimum fair wage rates set therein and reconvene the same wage board or appoint a new wage board to recommend whether or not the rate or rates contained in such order should be modified. The report of such wage board shall be dealt with in the manner prescribed in section 4 of this act.

SEC. 7. Section 3793 of the general statutes is repealed and the following is substituted in lieu thereof: The commissioner may, from time to time, propose such modification of or additions to any administrative regulations included in any order of the commissioner, without reference to a wage board, as he may deem appropriate to effectuate the purposes of this act and sections 3790 and 3796, provided such proposed modification or additions could legally have been included in the original order, and notice shall be given of a public hearing to be held by the commissioner [or director] not less than fifteen days after such publication, at which all persons in favor of or opposed to such proposed modifications or additions may be heard. After such hearing, the commissioner may make an

order putting into effect such proposed modifications of or additions to the administrative regulations as he shall deem appropriate.

SEC. 8. Section 3794 of the general statutes is repealed and the following is substituted in lieu thereof: Each employer, subject to the provisions of this act and sections 3790 and 3796, *unless exempted by regulation issued by the commissioner,* shall keep a true and accurate record of the hours worked by, and the wages paid by him to, each employee and shall furnish to the commissioner or *his* [the director or the] authorized representative [of the director], upon demand, a sworn statement of the same. Such records shall be open to inspection by the commissioner or *his* [the director or any] authorized representative [of the commissioner] at any reasonable time. Each employer subject to this act and sections 3790 and 3796 or to a minimum fair wage order shall keep a copy of this act and said sections 3790 and 3796 or such order posted in a conspicuous place. Employers shall be furnished copies of orders on request, without charge.

SEC. 9. Section 3795 of the general statutes is repealed and the following is substituted in lieu thereof: (a) Any employer or his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on a wage board or has testified or is about to testify before any wage board or in any other investigation or proceeding under or related to this act and sections 3790 and 3796, or because such employer believes that such employee may serve on any wage board or may testify before any wage board or in any investigation or proceeeding under this act and sections 3790 and 3796, shall be fined not less than fifty dollars nor more than two hundred dollars. (b) Any employer or the officer or agent of any corporation who pays or agrees to pay to any employee less than the rates applicable to such employee under the provisions of this act and sections 3790 and 3796 or a minimum fair wage order shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not less than ten days nor more than ninety days or be both fined and imprisoned, and each week for any day of which such employee has been paid less than the rate applicable to him under this act and said sections 3790 and 3796 or under a minimum fair wage order shall constitute a separate offense as to each employee so paid. (c) Any employer, *his officer or agent,* or the officer or agent of any corporation, *firm or partnership* who fails to keep the records required under this act and said sections 3790 and 3796, or to furnish such records to the

commissioner or [the director or] any authorized representative of the commissioner, upon request, *or who refuses to admit the commissioner or his authorized representative in his place of employment or who hinders or delays the commissioner or his authorized representative in the performance of his duties in the enforcement of this act or sections 3790 or 3796* shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each day of such failure to keep the records required under this act and sections 3790 and 3796 or to furnish the same to the commissioner [or the director] or any authorized representative of the commissioner shall constitute a separate offense, *and each day of refusal to admit, or of hindering, or delaying the commissioner or his authorized representative shall constitute a separate offense. (d) Nothing in this act shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or conditions of work in excess of the applicable minimum under this act or section 3790.*

SEC. 10. (a) Any employer who pays or agrees to pay to an employee less than the minimum fair wage, as defined in section 1 of this act, shall be deemed in violation of the provisions of this act and sections 3790 and 3796 of the general statutes. (b) The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such administrative regulations as may be appropriate to carry out the purposes of this act and sections 3790 and 3796 of the general statutes. Such regulations may include, but are not limited to, regulations defining and governing outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and may recognize as part of the minimum fair wage, bonuses, gratuities, special pay for special or extra work, deductions and allowances for the reasonable value of board, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; physically or mentally handicapped; minors under the age of eighteen years; and for such special cases or classes of cases as the commissioner may find appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage

herein established. (c) Regulations of the commissioner issued pursuant to subsection (b) of this section shall be made only after publication and public hearing by the commissioner, at which hearing any person may be heard. Such regulations shall take effect upon publication in the Connecticut Law Journal as provided in sections 280 to 287, inclusive, of the general statutes. (d) The provisions of subsection (a) of this section shall take effect January 1, 1952.

SEC. 11. Except as otherwise herein provided, this act shall take effect July 1, 1951. Wage orders in effect or issued before July 1, 1951, shall be modified to provide a minimum fair wage of seventy-five cents per hour effective October 1, 1951, and shall thereafter remain in full force and effect until otherwise modified in accordance with the provisions of this act.

Approved July 6, 1951.

PUBLIC ACT NO. 353

AN ACT CONCERNING THE FEES OF DEPUTY SHERIFFS ATTENDING COURT.

SECTION 1. Section 3621 of the general statutes is repealed and the following is substituted in lieu thereof: Each deputy sheriff, when attending the supreme court of errors, the superior court or the court of common pleas, and the city sheriff of Waterbury when attending the court of common pleas in the district of Waterbury, shall receive [ten] *twelve* dollars for each day of such attendance, but no deputy sheriff shall receive more than one day's fee for his attendance at court in any one day. Each constable, when attending such courts, shall receive four dollars for each day of such attendance. Each officer who summons the jury and attends the court in a trial of forcible entry and detainer shall receive, for the first day, two dollars; for each subsequent day, one dollar.

SEC. 2. This act shall take effect from its passage.

Approved June 29, 1951

PUBLIC ACT NO. 354

AN ACT AMENDING THE WORKMEN'S COMPENSATION ACT.

SECTION 1. Section 615a of the 1949 supplement to the general statutes is repealed and the following is substituted

provisions of this subsection and subsection (c) shall not apply to authorized emergency vehicles. (c) Flashing lights are prohibited on motor vehicles other than school busses, except *(1)* as a means for indicating a right or left turn, *(2) flashing blue lights used by members of volunteer or civil defense fire companies, as provided by section 1 of this act, or (3) on certain emergency vehicles by written permit from the commissioner. The prohibitions in this section shall not prevent the operator of a disabled vehicle stopped in a hazardous location on the highway, or in close proximity thereto, from flashing such lights as may be installed on the vehicle, primarily for other purposes, in any manner that he may select so as to indicate that such vehicle is disabled and is a hazard to be avoided.*

PUBLIC ACT NO. 435

AN ACT CONCERNING RAISING THE MINIMUM FAIR WAGE TO ONE DOLLAR.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. Subsection (f) of section 2025d of the 1955 supplement to the general statutes is repealed and the following is substituted in lieu thereof: "Employee" shall mean any individual employed or permitted to work by an employer but shall not include any individual employed in agriculture *or in camps or resorts which are open no more than six months of the year*, or in domestic service in or about a private home or an individual employed in a bona fide executive, administrative or professional capacity or an individual employed by a federal, state or municipal government or political subdivision thereof, or any individual engaged in the activities of an educational, charitable, religious, *scientific, historical, literary* or non-profit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis, or any individual subject to the provisions of the Fair Labor Standards Act, as amended. *A resort is defined as an establishment under one management whose principal function it is to offer lodging by the day, week, month or season, or part thereof, to vacationers or those in search of recreation.*

SEC. 2. Subsection (i) of section 2025d of said supplement is repealed and the following is substituted in lieu thereof:

"Minimum fair wage" in any industry or occupation in the state shall mean a wage of not less than [seventy-five cents] *one dollar* per hour except as may otherwise be established in accordance with the provisions of this chapter.

SEC. 3. Subsection (c) of section 2026d of said supplement is repealed and the following is substituted in lieu thereof: To require from such employer full and correct statements in writing, when the commissioner or any authorized representative of the commissioner shall deem necessary, of the wages paid to all persons in his employment. The commissioner shall have the power, on his own motion, and it shall be the duty of the commissioner on the petition of fifty or more residents of the state, to cause an investigation to be made of the wages being paid to persons in any occupation to ascertain whether any substantial number of persons in such occupation is receiving less than a fair wage as defined in section 2025d. If the commissioner shall be of the opinion that any substantial number of persons in any occupation or occupations, *except in hotels, restaurants, inns and cabins,* is receiving less than a fair wage as defined in said section 2025d, he shall appoint a wage board as hereinafter provided to report upon the establishment of minimum fair wage rates of not less than [seventy-five cents] *one dollar* per hour for such persons in such occupation or occupations. *The commissioner may appoint a wage board as hereinafter provided to report upon the establishment of minimum fair wage rates of not less than seventy-five cents per hour for persons employed in hotels, restaurants, inns and cabins, and until such wage board has made its report and a wage order has been made by the commissioner for such occupations, the minimum fair wage rates for persons employed in hotels, restaurants, inns and cabins shall be not less than seventy-five cents per hour.*

SEC. 4. Section 3790 of the general statutes is repealed and the following is substituted in lieu thereof: [For any occupation for which minimum fair wage rates have been established] The commissioner may cause to be issued to any person [, including a learner or apprentice,] whose earning capacity is impaired by age or physical or mental deficiency or injury, a special license authorizing employment at such wages less than [such] *the* minimum fair wage [rates] and for such period of time as shall be fixed by the commissioner and stated in the license.

SEC. 5. Subsection (b) of section 2034d of said supplement is repealed and the following is substituted in lieu thereof: The labor commissioner, after consultation with a board composed

of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such administrative regulations as may be appropriate to carry out the purposes of this chapter. Such regulations may include, but are not limited to, regulations defining and governing outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and may recognize as part of the minimum fair wage, bonuses, gratuities, special pay for special or extra work, deductions and allowances for the reasonable value of board, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; [physically or mentally handicapped; minors] *persons* under the age of eighteen years; and for such special cases or classes of cases as the commissioner may find appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established; *but such modifications shall not provide for a minimum wage less than seventy-five cents per hour.*

SEC. 6. Wage orders and minimum wage regulations in effect July 1, 1957, are modified to provide a minimum wage of one dollar per hour and a minimum wage of seventy-five cents per hour for learners and apprentices and so modified shall remain in full force and effect until otherwise modified in accordance with the provisions of this act.

SEC. 7. This act shall take effect July 1, 1957.

PUBLIC ACT NO. 436

AN ACT ESTABLISHING PROCEDURE FOR REVIEW OF SENTENCES IMPOSED BY THE SUPERIOR COURT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. The chief justice shall appoint three judges of the superior court to act as a review division of said court and shall designate one of such judges to act as chairman thereof.

SUBSTITUTE FOR SENATE BILL NO. 985.

PUBLIC ACT NO. 683

AN ACT EXTENDING THE COVERAGE OF THE MINIMUM WAGE LAW.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. Section 31-58 of the general statutes is repealed and the following is substituted in lieu thereof: As used in this part, (a) "commissioner" means the labor commissioner; (b) "wage board" means a board created as provided in section 31-61; (c) "fair wage" means a wage fairly and reasonably commensurate with the value of a particular service or class of service rendered, and, in establishing a minimum fair wage for such service or class of service under this part, the commissioner and the wage board, without being bound by any technical rules of evidence or procedure, (1) may take into account all relevant circumstances affecting the value of the services rendered, including hours and conditions of employment affecting the health, safety and general well-being of the workers, and (2) may be guided by such considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer without contract as to the amount of the wage to be paid and (3) may consider the wages, including overtime or premium rates, paid in the state for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards; (d) "department" means the labor department; (e) "employer" means any *owner or any* person, *partnership,* corporation or association of persons acting directly as or in behalf of or in the interest of an employer in relation to employees; (f) "employee" means any individual employed or permitted to work by an employer but shall not include any individual employed in agriculture or in camps or resorts which are open no more than six months of the year or in domestic service in or about a private home, or an individual employed in a bona fide executive, administrative or professional capacity *as defined in the regulations of the labor commissioner* or an individual employed by a federal, state or municipal government or political subdivision thereof, or any individual engaged in the activities of an educational, charitable, religious, scientific, historical, literary or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis, or any individual subject to the provisions of the Fair Labor Standards Act, as amended, *provided any individual who is exempt under the provisions of sub-*

division (1) to (5), inclusive, (7) to (9), inclusive, (11), (12), (13) and (15) of subsection (a), subdivisions (4) and (5) of subsection (b), subsection (c) and subsection (d) of section 213 of the Fair Labor Standards Act, as amended, (29 U.S.C.A. 213), shall be deemed to be an employee; (g) a resort is defined as an establishment under one management whose principal function it is to offer lodging by the day, week, month or season, or part thereof, to vactioners or those in search of recreation; [(g)] *(h)* "employ" means to employ or suffer to work; [(h)] *(i)* "wage" means compensation due to an employee by reason of his employment; [(i)] *(j)* "minimum fair wage" in any industry or occupation in the state means a wage of not less than one dollar per hour except as may otherwise be established in accordance with the provisions of this part.

SEC. 2. Section 31-59 of the general statutes is repealed and the following is substituted in lieu thereof: The commissioner or any authorized representative of the commissioner shall have authority: (a) To investigate and ascertain the wages of persons employed in any occupation in the state; (b) to enter the place of business or employment of any employer of persons in any occupation for the purpose of examining and inspecting any and all books, registers, payrolls and other records of any such employer that in any way appertain to or have a bearing upon the question of wages of any such persons and for the purpose of ascertaining whether the provisions of this part and the orders of the commissioner have been and are being complied with; and (c) to require from such employer full and correct statements in writing, when the commissioner or any authorized representative of the commissioner deems necessary, of the wages paid to all persons in his employment. The commissioner may, on his own motion, and shall, on the petition of fifty or more residents of the state, cause an investigation to be made of the wages being paid to persons in any occupation to ascertain whether any substantial number of persons in such occupation is receiving less than a fair wage. If the commissioner is of the opinion that any substantial number of persons in any occupation or occupations [except in hotels, restaurants, inns and cabins,] is receiving less than a fair wage, he shall appoint a wage board as provided in section 31-61 to report upon the establishment of minimum fair wage rates of not less than [one dollar per hour] *the minimum fair wage as defined in section 1 of this act* for such persons in such occupation or occupations. [The commissioner may appoint a wage board as provided in section 31-61 to report upon the establishment of minimum fair wage rates of not less than seventy-five cents per hour for persons employed in hotels, restaurants, inns and cabins, and until such wage board has made its report and a wage order has been made by the commissioner for such occupations, the minimum fair wage rates for persons employed in hotels, res-

taurants, inns and cabins shall be not less than seventy-five cents per hour.]

SEC. 3. Section 31-60 of the general statutes is repealed and the following is substituted in lieu thereof: (a) Any employer who pays or agrees to pay to an employee less than the minimum fair wage *or overtime wage* shall be deemed in violation of the provisions of this part. (b) The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representating the public, shall make such [administrative] regulations as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing *an executive, administrative or professional employee and* outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and may recognize, as part of the minimum fair wage, [bonuses,] gratuities *not to exceed thirty-five cents per hour for persons employed in the restaurant industry, which term shall include a hotel restaurant, and not to exceed thirty cents per hour in any other industry* [special pay for special or extra work], deductions and allowances for the reasonable value of board, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established; [but such modifications shall not provide for a minimum wage less than seventy-five cents per hour;] (c) regulations of the commissioner issued pursuant to subsection (b) of this section shall be made only after publication and public hearing by the commissioner, at which hearing any person may be heard. Such regulations shall take effect upon publication in the Connecticut Law Journal as provided in section 4-41 to 4-50, inclusive.

SEC. 4. Section 31-66 of the general statutes is repealed and the following is substituted in lieu thereof: Each employer subject to the provisions of this part, unless exempted by regulation issued by the commissioner, shall keep *at the place of employment for a period of three years* a true and accurate record of the hours worked by, and the wages paid by him to each employee, *as required by the applicable regulations issued by the labor commissioner,* and shall furnish to the commissioner

or his authorized representative, upon demand, a sworn statement of the same. Such records shall be open to inspection by the commissioner or his authorized representative at any reasonable time. Each employer subject to this part or to a minimum fair wage order shall keep a copy of [this part or] such order *and the regulations issued by the labor commissioner* posted [in a conspicuous place] *at the place of employment where it can be read easily by the employees.* Employers shall be furnished copies of orders *and regulations* on request, without charge.

SEC. 5. Section 31-68 of the general statutes is repealed and the following is substituted in lieu thereof: If any worker is paid by his employer less than the minimum fair wage *or overtime wage* to which he is entitled under *this act* or by virtue of a minimum fair wage order he may recover, in a civil action, the full amount of such minimum wage less any amount actually paid to him by the employer, with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer to work for less than such minimum fair wage *or overtime wage* shall be no defense to such action. At the request of any worker paid less than the minimum *fair* wage *or overtime wage* to which he was entitled *under this act or* under an order, the commissioner may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

SEC. 6. Section 31-69 of the general statutes is repealed and the following is substituted in lieu thereof: (a) Any employer or his agent, or the officer or agent of any corporation, who discharges or in any other manner discriminates against any employee because such employee has served or is about to serve on a wage board or has testified or is about to testify before any wage board or in any other investigation or proceeding under or related to this part, or because such employer believes that such employee may serve on any wage board or may testify before any wage board or in any investigation or proceeding under this part, shall be fined not less than fifty dollars nor more than two hundred dollars. (b) Any employer or the officer or agent of any corporation who pays or agrees to pay to any employee less than the rates applicable to such employee under the provisions of this part or a minimum fair wage order shall be fined not less than fifty dollars nor more than two hundred dollars or imprisoned not less than ten days nor more than ninety days or be both fined and imprisoned, and each week for any day of which such employee has been paid less than the rate applicable to him under this part or under a minimum fair wage order shall constitute a separate offense as to each em-

ployee so paid. (c) Any employer, his officer or agent, or the officer or agent of any corporation, firm or partnership, who fails to keep the records required under this part *or by regulation made in accordance with this part* or to furnish such records to the commissioner or any authorized representative of the commissioner, upon request, or who refuses to admit the commissioner or his authorized representative to his place of employment or who hinders or delays the commissioner or his authorized representative in the performance of his duties in the enforcement of this part shall be fined not less than twenty-five dollars nor more than one hundred dollars, and each day of such failure to keep the records required under this part or to furnish the same to the commissioner or any authorized representative of the commissioner shall constitute a separate offense, and each day of refusal to admit or of hindering or delaying the commissioner or his authorized representative shall constitute a separate offense. (d) Nothing in this part shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or conditions of work in excess of the applicable minimum under this part.

SUBSTITUTE FOR HOUSE BILL NO. 3450.

PUBLIC ACT NO. 684

AN ACT CONCERNING ADMISSION OF ELECTORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. Section 9-20 of the general statutes is repealed and the following is substituted in lieu thereof: Each person who applies for admission as an elector at any session of the board for admission of electors shall, upon a form or forms approved by the secretary of the state, signed by the applicant, state under oath his name, residence, birthplace, date of birth and occupation, how long he has continuously resided in this state and the town in which he so applies, whether his privileges as an elector are forfeited by reason of conviction of crime, whether he has previously been admitted as an elector in any town in this state, whether single, married, widow or widower, and, if the applicant is a married woman, the date of her marriage and the birthplace of her husband and whether he is an alien or native born. Before his admission he shall read at least three lines of the constitution or of the statutes of this state,

which shall not be removed except in the presence of the consumer or patron, but this provision shall not apply to cream so served or to mixed beverages of which milk forms a part, or to pasteurized homogenized milk or cream with or without flavoring dispensed from a refrigerated dispensing machine approved by the commissioner, if the location, maintenance and operation of the machine, in the opinion of the commissioner, provide full and adequate sanitary protection for the milk. Only pasteurized milk *and pasteurized low fat milk* and pasteurized cream or milk *and low fat milk* and cream from a herd certified free from brucellosis and tuberculosis shall be served to consumers in any hotel, restaurant or lunchroom or at any fountain or in any place of public entertainment whether served as milk *and low fat milk* and cream or as a part of a mixed beverage.

SEC. 6. Section 22-159 of the general statutes is repealed and the following is substituted in lieu thereof: No person shall sell, or offer or expose for sale, or have in his possession with the intent to mix with other dairy products to be sold, milk from which the cream or any part thereof has been removed, unless the product [is plainly labeled. Skimmed milk may be sold in milk bottles or other approved containers if properly marked or tagged as such skimmed milk.] *is defined in section 1 of this act or otherwise provided for in this chapter. Skimmed milk and low fat milk may be sold only in properly labeled milk bottles or other approved containers.*

SUBSTITUTE FOR SENATE BILL NO. 654.

PUBLIC ACT NO. 519

AN ACT INCREASING MINIMUM WAGES.

SECTION 1. Subsection (f) of section 31-58 of the 1959 supplement to the general statutes is repealed and the following is substituted in lieu thereof: "Employee" means any individual employed or permitted to work by an employer but shall not include any individual employed in agriculture or in camps or resorts which are open no more than six months of the year or in domestic service in or about a private home, or an individual employed in a bona fide executive, administrative or professional capacity as defined in the regulations of the labor commissioner or an individual employed by a federal, state or municipal government or political subdivision thereof, or any individual engaged in the activities of an educational, charitable, religious, scientific, historical, literary or non-profit organization where the employer-employee relationship does not, in

fact, exist or where the services rendered to such organizations are on a voluntary basis, or any individual subject to the provisions of the Fair Labor Standards Act, as amended, provided any individual who is exempt under the provisions of subdivisions (1) to (5), inclusive, (7) to (9), inclusive, (11), (12), (13) and (15 of subsection (a), subdivisions (4) and (5) of subsection (b), subsection (c) and subsection (d) of section 13 of the Fair Labor Standards Act, as amended, (29U.S.C.A. 213), *and any individual employed in an industry with respect to which a wage order has been established or may be established,* shall be deemed to be an employee.

SEC. 2. Subsection (j) of section 31-58 of said supplement is repealed and the following is substituted in lieu thereof: "Minimum fair wage" in any industry or occupation in the state means a wage of not less than one dollar *and fifteen cents* per hour *until October 1, 1963, and thereafter not less than one dollar and twenty-five cents per hour,* except as may otherwise be established in accordance with the provisions of this part. *All wage orders in effect on the effective date of this act, wherein a lower minimum fair wage has been established, are amended to provide for the payment of the minimum fair wage herein established except as hereinafter provided. The minimum fair wage for employees employed in the hotel and restaurant industries means a wage of not less than one dollar per hour until May 1, 1962, and thereafter not less than one dollar and fifteen cents per hour until May 1, 1964, and thereafter not less than one dollar and twenty-five cents per hour. All wage orders and administrative regulations in effect on said date wherein an allowance for gratuities has been established are amended to provide an increase of five cents above the allowance so established except for persons employed in the hotel and restaurant industries. The wage orders and administrative regulations affecting persons employed in the hotel and restaurant industries in effect on said date wherein an allowance for gratuities has been established are amended as follows: Effective May 1, 1962, to provide an increase of five cents above the allowance therein established and effective May 1, 1964, to provide a further increase of five cents above the allowance theretofore established for persons employed in the restaurant industry only, which term includes a hotel restaurant. All wage orders and administrative regulations in effect on said date wherein the rates established for learners and persons under the age of eighteen years are less than eighty-five cents per hour are amended to provide for the payment of eighty-five cents per hour until October 1, 1963, and the payment of ninety-five cents per hour thereafter.*

SEC. 3. Section 31-60 of said supplement is repealed and the following is substituted in lieu thereof: (a) Any employer who

pays or agrees to pay to an employee less than the minimum fair wage or overtime wage shall be deemed in violation of the provisions of this part. (b) The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such regulations as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and may recognize, as part of the minimum fair wage, gratuities not to exceed thirty-five cents per hour *until May 1, 1962, and gratuities not to exceed forty cents per hour until May 1, 1964, and thereafter not to exceed forty-five cents per hour* for persons employed in the *hotel and* restaurant industry, which term shall include a hotel restaurant, and not to exceed [thirty] *thirty-five* cents per hour in any other industry, deductions and allowances for the reasonable value of board, *based on the actual cost of food and labor*, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established; (c) regulations of the commissioner issued pursuant to subsection (b) of this section shall be made only after publication and public hearing by the commissioner, at which hearing any person may be heard. Such regulations shall take effect upon publication in the Connecticut Law Journal as provided in sections 4-41 to 4-50, inclusive.

method for making a valid agreement for municipal employees represented by an employee organization, and any provisions in any general statute, charter or special act to the contrary shall not apply to such an agreement.

SEC. 10. Subsection (f) of section 7-474 of the general statutes is repealed and the following is substituted in lieu thereof: Where there is a conflict between any agreement reached by a municipal employer and an employee organization and approved in accordance with the provisions of sections 7-467 to 7-477, inclusive, on matters appropriate to collective bargaining, as defined in said sections, and any charter, special act, ordinance, rules or regulations adopted by the municipal employer or its agents such as a personnel board or civil service commission, or any general statute directly regulating the hours of work of policemen or firemen, *or any general statute providing for the method of covering or removing employees from coverage under the Connecticut municipal employees retirement system,* the terms of such agreement shall prevail.

SEC. 11. This act shall take effect from its passage.

Approved June 16, 1967.

SUBSTITUTE FOR SENATE BILL NO. 1276.

PUBLIC ACT NO. 492

AN ACT INCREASING THE MINIMUM FAIR WAGE.

SECTION 1. Subsection (j) of section 31-58 of the 1965 supplement to the general statutes is repealed and the following is substituted in lieu thereof: "Minimum fair wage" in any industry or occupation in the state means a wage of not less than one dollar and [fifteen] *forty* cents per hour until [October 1, 1963] *July 1, 1968,* and thereafter not less than one dollar and [twenty-five] *sixty* cents per hour, except as may otherwise be established in accordance with the provisions of this part. All wage orders in effect on [October 1, 1961] *July 1, 1967,* wherein a lower minimum fair wage has been established, are amended to provide for the payment of the minimum fair wage herein established except as hereinafter provided. [The minimum fair wage for employees employed in the hotel and restaurant industries means a wage of not less than one dollar per hour

until May 1, 1962, and thereafter not less than one dollar and fifteen cents per hour until May 1, 1964, and thereafter not less than one dollar and twenty-five cents per hour. All wage orders and administrative regulations in effect on said date where an allowance for gratuities has been established are amended to provide an increase of five cents above the allowance so established except for persons employed in the hotel and restaurant industries.] The wage orders and adminstrative regulations affecting persons employed in the hotel and restaurant industries in effect on [said date] *July 1, 1967,* wherein an allowance for gratuities has been established are amended as follows: Effective [May 1, 1962,] *July 1, 1967,* to provide an increase of [five] *two* cents above the allowance therein established and effective [May 1, 1964] *July 1, 1968,* to provide a further increase of [five] *three* cents above the allowance theretofore established for persons employed in the restaurant industry only, which term includes a hotel restaurant. All wage orders and administrative regulations in effect on [said date] *July 1, 1967,* wherein the rates established for learners, beginners, and persons under the age of eighteen years are less than [eighty-five] *one dollar and ten* cents per hour are amended to provide for the payment of [eighty-five cents per hour] *one dollar and ten cents per hour for the first five hundred hours of such employment and one dollar and forty cents per hour thereafter* until [October 1, 1963,] *July 1, 1968,* and after [October 1, 1963] *July 1, 1968,* the payment of [ninety-five] *one dollar and twenty-five* cents per hour for the first five hundred hours of such employment and one dollar and [twenty-five] *sixty* cents per hour thereafter, except institutional training programs specifically exempted by the commissioner.

SEC. 2. Subsection (b) of section 31-60 of the general statutes is repealed and the following is substituted in lieu thereof: The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such regulations as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and may recognize, as part of the minimum fair wage, gratuities not to exceed [thirty-five] *forty-seven* cents per hour until [May 1, 1962, and gratuities not to exceed forty cents per hour until May 1, 1964,] *July 1, 1968,* and

thereafter not to exceed [forty-five] *fifty* cents per hour for persons employed in the hotel and restaurant industry, which term shall include a hotel restaurant, and not to exceed thirty-five cents per hour in any other industry, deductions and allowances for the reasonable value of board, based on the actual cost of food and labor, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established.

SEC. 3. This act shall take effect July 1, 1967.

SUBSTITUTE FOR SENATE BILL NO. 1269.

PUBLIC ACT NO. 493

AN ACT CONCERNING PAYMENT OF OVERTIME WAGES.

SECTION 1. As used in this act, (1) the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include (A) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency; (B) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment; (C) sums paid in recognition of services performed during a given period if either, (i) both the fact that

Substitute House Bill No. 9131

PUBLIC ACT NO. 616

AN ACT REQUIRING THE MINIMUM WAGE BE RAISED IN THE STATE OF CONNECTICUT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 1 of number 45 of the public acts of the current session is repealed and the following is substituted in lieu thereof: "Minimum fair wage" in any industry or occupation in this state means a wage of not less than one dollar and [sixty-one] *EIGHTY-FIVE* cents per hour, or one-half of one per cent rounded to the nearest whole cent more than the federal minimum wage, whichever is greater, except as may otherwise be established in accordance with the provisions of this part. All wage orders in effect on the effective date of this act, wherein a lower minimum fair wage has been established, are amended to provide for the payment of the minimum fair wage herein established except as hereinafter provided. Whenever the federal minimum wage is increased, the minimum fair wage established under this part shall be increased to the amount of said federal minimum wage plus one-half of one per cent more than said federal rate, rounded to the nearest whole cent, effective on the same date as the increase in the federal minimum wage, and shall apply to all wage orders and administrative regulations then in force. [Whenever the federal minimum wage is increased, the allowance for gratuities for persons employed in the restaurant industry, which term includes a hotel restaurant, shall be increased by an amount equal to fifteen per cent of such increase. When the application of this fifteen per cent results in a fraction, the amount so determined shall be increased to the next higher cent when the fraction is more than one-half cent, but when such fraction equals or is less than one-half cent, the amount so determined shall be rounded down to the next full cent.] The rates for learners, beginners, and persons under the age of eighteen years shall be one dollar and [twenty-five] FIFTY cents per hour for the first two hundred hours of such employment and one dollar and [sixty-one] EIGHTY-FIVE cents per hour thereafter unless the state minimum wage is increased in accordance with the provisions of this subsection, in which case it shall be such

increased amount, except institutional training programs specifically exempted by the commissioner.

Sec. 2. Subsection (b) of section 31-60 of the 1969 supplement to the general statutes is repealed and the following is substituted in lieu thereof: The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such regulations as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and may recognize, as part of the minimum fair wage, gratuities not to exceed [forty-seven cents per hour until July 1, 1968, and thereafter not to exceed fifty] SIXTY cents per hour for persons employed in the hotel and restaurant industry, which term shall include a hotel restaurant, and not to exceed thirty-five cents per hour in any other industry, deductions and allowances for the reasonable value of board, based on the actual cost of food and labor, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established.

Approved July 6, 1971

House Bill No. 5667

PUBLIC ACT NO. 80-64

AN ACT CONCERNING THE MINIMUM WAGE GRATUITY ALLOWANCE AND THE WORKWEEK FOR CERTAIN ESTABLISHMENTS.

Section 1. Subsection (b) of section 31-60 of the general statutes is repealed and the following is substituted in lieu thereof:

(b) The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such regulations as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesmen; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and [may] SHALL recognize, as part of the minimum fair wage, gratuities [not to exceed sixty cents per hour] IN AN AMOUNT EQUAL TO TWENTY-THREE PER CENT OF THE MINIMUM FAIR WAGE PER HOUR for persons employed in the hotel and restaurant industry, which term shall include a hotel restaurant, and not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent herewith without the necessity of convening a wage board or amending said regulations.

Sec. 2. Section 31-76d of the general statutes is repealed.

Sec. 3. Section 31-76b of the general statutes is repealed and the following is substituted in lieu thereof:

As used in sections 31-76b to 31-76j, inclusive, (1) the "regular rate" at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee, but shall not be deemed to include (A) sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are *not measured by or dependent on hours worked, production or efficiency;* (B) payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause; reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer; and other similar payments to an employee which are not made as compensation for his hours of employment; (C) sums paid in recognition of services performed during a given period if either, (i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such

payments regularly; (ii) the payments are made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, meeting the approval of the labor commissioner who shall give due regard, among other relevant factors, to the extent to which the amounts paid to the employee are determined with regard to hours of work, production or efficiency; (D) contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident or health insurance or similar benefits for employees; (E) extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because such hours are hours worked in excess of eight in a day or in excess of the maximum workweek applicable to such employee under section 31-76c [or 31-76d], or in excess of the employee's normal working hours or regular working hours, as the case may be; (F) extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or (G) extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective-bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal or regular workday, not exceeding the maximum workweek applicable to such employee under section 31-76c [or 31-76d], where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek; (2) (A) "hours worked" include all time during which an employee is required by the employer to be on the employer's premises or to be on duty, or to be at the prescribed work place, and all time during which an employee is employed or permitted to work, whether or not required to do so, provided time allowed for meals shall be excluded unless the employee is required or permitted to work. Such time includes, but shall not be limited to, the time when an employee is required to wait on the premises while no work is provided by the employer. (B) All time during which an employee is required to be on call for emergency service at a location designated by the employer shall be considered to be working time and shall be paid for as such, whether or not the employee is actually called upon to work. (C) When an employee is subject to call for emergency service but is not required to be at a location designated by the employer but is simply required to keep the employer informed as to the location at which he may be contacted, or when an employee is not specifically required by his employer to be subject to call but is contacted by his employer or on the employer's authorization directly or indirectly and assigned to duty, working time shall begin when the employee is notified of his assignment and shall end when the employee has completed his assignment; (3) "employee" means employee as defined in section 31-58.

Sec. 4. Section 31-76e of the general statutes is repealed and the following is substituted in lieu thereof:

No employer shall be deemed to have violated section 31-76c [or 31-76d] by employing any employee for a workweek in excess of the maximum workweek applicable to such employee if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in subsection (j) of section 31-58 and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

Sec. 5. Section 31-76f of the general statutes is repealed and the following is substituted in lieu thereof:

No employer shall be deemed to have violated section 31-76c [or 31-76d] by employing any employee for a workweek in excess of the maximum workweek applicable to such employee if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under section 31-76c [or 31-76d]: (A) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or (B) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in subparagraphs (A) to (G), inclusive, of subdivision (1) of section 31-76b are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

Sec. 6. Section 31-76h of the general statutes is repealed and the following is substituted in lieu thereof:

No employer engaged in the operation of a hospital shall be deemed to have violated section 31-76c [or 31-76d] if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen consecutive days is accepted in lieu of the workweek of seven consecutive days for purposes of overtime computation and if, for his employment in excess of eight hours in any workday and in excess of eighty hours in such fourteen-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which he is employed.

Sec. 7. This act shall take effect January 1, 1981.

House Bill No. 5121

PUBLIC ACT NO. 80-65

AN ACT CONCERNING THE RECOVERY OF INCORRECT PAYMENTS MADE IN THE MEDICAL ASSISTANCE PROGRAM.

Section 17-82j of the general statutes is repealed and the following is substituted in lieu thereof:

If any person receiving an award for the care of any dependent child or children, or any person legally liable for the support of such child or children, or any other person being supported wholly or in part under the provisions of [part II of] this chapter or any beneficiary under [part III of] this chapter or any legally liable relative of such beneficiary, receives property, wages, income or resources of any kind, such person or beneficiary, within fifteen days after obtaining knowledge of or receiving such property, wages, income or resources, shall notify the commissioner thereof in writing. No such person or beneficiary shall sell, assign, transfer, encumber or otherwise dispose of any property without the consent of the commissioner. The provisions of section 17-303 shall be applicable with respect to any person applying for or receiving an award under this chapter. Any change in the information which has been furnished on an application form or a redetermination of eligibility form shall also be reported to the commissioner, in writing, within fifteen days of the occurrence of such change.

Substitute House Bill No. 5160

Public Act No. 00-144

An Act Increasing The Minimum Wage.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (j) of section 31-58 of the general statutes is repealed and the following is substituted in lieu thereof:

(j) "Minimum fair wage" in any industry or occupation in this state means a wage of not less than two dollars and sixty-six cents per hour, and effective January 1, 1979, not less than two dollars and ninety-one cents per hour, and effective January 1, 1980, not less than three dollars and twelve cents per hour, and effective January 1, 1981, not less than three dollars and thirty-seven cents per hour, and effective October 1, 1987, not less than three dollars and seventy-five cents per hour, and effective October 1, 1988, not less than four dollars and twenty-five cents per hour, and effective January 1, 1999, not less than five dollars and sixty-five cents per hour, and effective January 1, 2000, not less than six dollars and fifteen cents per hour, and effective January 1, 2001, not less than six dollars and forty cents per hour, and effective January 1, 2002, six dollars and seventy cents per hour, or one-half of one per cent rounded to the nearest whole cent more than the highest federal minimum wage, whichever is greater, except as may otherwise be established in accordance with the provisions of this part. All wage orders in effect on October 1, 1971, wherein a lower minimum fair wage has been established, are amended to provide for the payment of the minimum fair wage herein established except as hereinafter provided. Whenever the highest federal minimum wage is increased, the minimum fair wage established under this part shall be increased to the amount of said federal minimum wage plus one-half of one per cent more than said federal rate, rounded to the nearest whole cent, effective on the same date as the increase in the highest federal minimum wage, and shall apply to all wage orders and administrative regulations then in force. The rates for learners, beginners, and persons under the age of eighteen years shall be not less than eighty-five per cent of the minimum fair wage for the first two hundred hours of such employment and equal to the minimum fair wage thereafter, except institutional training programs specifically exempted by the commissioner.

Sec. 2. Subsection (b) of section 31-60 of the general statutes, as amended by public act 99-199, is repealed and the following is substituted in lieu thereof:

(b) The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesperson; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and shall recognize, as part of the minimum fair wage, gratuities in an amount equal to twenty-three per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry, [which term shall include] including a hotel restaurant, and not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. Notwithstanding the provisions of this subsection, such regulations shall provide that during the period commencing January 1, 2001, and ending December 31, 2002, the minimum wage for persons employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities shall be four dollars and seventy-four cents per hour, except during said period the minimum wage for bartenders who customarily and regularly receive gratuities shall be six dollars and fifteen cents per hour. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent herewith without the necessity of convening a wage board or amending said regulations.

Sec. 3. Subsection (b) of section 31-23 of the general statutes is repealed and the following is substituted in lieu thereof:

(b) (1) Notwithstanding the provisions of subsection (a) of this section, a minor who has reached the age of fifteen may be employed or permitted to work in any mercantile establishment, from June 19, 1992, to September 30, 2002, inclusive, as a bagger, cashier or stock clerk, provided such employment shall be (A) limited to periods of school vacation during which school is not in session for five consecutive days or more except that such minor employed in a retail food store who may work on any Saturday during the year; (B) for not more than forty hours in any week; (C) for not more than eight hours in any day; and (D) between the hours of seven o'clock in the morning and seven o'clock in the evening, except that from July first to the first Monday in September in any year, any such minor may be employed until nine o'clock in the evening. (2) Each person who employs a fifteen-year-old minor in any mercantile establishment pursuant to this subsection shall obtain a certificate stating that such minor is fifteen years of age or older, as provided in section 10-193. Such certificate shall be kept on file at the place of employment and shall be available at all times during business hours to the inspectors of the Labor Department. (3) The Labor Commissioner may adopt regulations, in accordance with the provisions of chapter 54, as he deems necessary to implement the provisions of this subsection.

Approved May 26, 2000

Substitute House Bill No. 6557

Public Act No. 01-42

AN ACT MAKING TECHNICAL REVISIONS TO CERTAIN LABOR STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (5) of subsection (b) of section 31-3h of the general statutes is repealed and the following is substituted in lieu thereof:

(5) Implementing the federal Workforce Investment Act of 1998, P.L. 105-220, as from time to time amended. Such implementation shall include (A) developing, in consultation with the regional workforce development boards, a single Connecticut workforce development plan that (i) complies with the provisions of said act and section 31-11p, and (ii) includes comprehensive state performance measures for workforce development activities specified in Title I of the federal Workforce Investment Act of 1998, P.L. 105-220, as from time to time amended, which performance measures comply with the requirements of CFR Part 666.10, (B) preparing and submitting a report on the state's progress in achieving such performance measures to the Governor and the General Assembly [on or before said date and annually thereafter] annually on January thirty-first, (C) making recommendations to the General Assembly concerning the allocation of funds received by the state under said act and making recommendations to the regional workforce development boards concerning the use of formulas in allocating such funds to adult employment and job training activities and youth activities, as specified in said act, (D) providing oversight and coordination of the state-wide employment statistics system required by said act, (E) as appropriate, recommending to the Governor that the Governor apply for workforce flexibility plans and waiver authority under said act, after consultation with the regional workforce development boards, (F) developing performance criteria for regional workforce development boards to utilize in creating a list of eligible providers, and (G) on or before December 31, 1999, developing a uniform individual training accounts voucher system that shall be used by the regional workforce development boards to pay for training of eligible workers by eligible providers, as required under said act.

Sec. 2. Subsection (b) of section 31-60 of the general statutes is repealed and the following is substituted in lieu thereof:

(b) The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesperson; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and shall recognize, as part of the minimum fair wage, gratuities in an amount equal to twenty-three per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry, including a hotel restaurant, and not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. [Notwithstanding the provisions of this subsection, such regulations shall provide that during the period commencing January 1, 2001, and ending December 31, 2002, the minimum wage for persons employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities shall be four dollars and seventy-four cents per hour, except during said period the minimum wage for bartenders who customarily and regularly receive gratuities shall be six dollars and fifteen cents per hour.] Notwithstanding the provisions of this subsection: (1) For the period commencing January 1, 2001, and ending December 31, 2001, such regulations shall recognize, as part of the minimum fair wage, gratuities in an amount equal to (A) twenty-six per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry, including a hotel restaurant, and (B) three and nine-tenths per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities; and (2) for the period commencing January 1, 2002, and ending December 31, 2002, such regulations shall recognize, as part of the minimum fair wage, gratuities in an amount equal to (A) twenty-nine and three-tenths per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry, including a hotel restaurant, and (B) eight and two-tenths per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent [herewith] with this section without the necessity of convening a wage board or amending said regulations.

Sec. 3. This act shall take effect from its passage.

Approved May 31, 2001

Substitute House Bill No. 5057

Public Act No. 02-33

AN ACT INCREASING THE MINIMUM WAGE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (j) of section 31-58 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

(j) "Minimum fair wage" in any industry or occupation in this state means a wage of not less than [two dollars and sixty-six cents per hour, and effective January 1, 1979, not less than two dollars and ninety-one cents per hour, and effective January 1, 1980, not less than three dollars and twelve cents per hour, and effective January 1, 1981, not less than three dollars and thirty-seven cents per hour, and effective October 1, 1987, not less than three dollars and seventy-five cents per hour, and effective October 1, 1988, not less than four dollars and twenty-five cents per hour, and effective January 1, 1999, not less than five dollars and sixty-five cents per hour, and effective January 1, 2000, not less than six dollars and fifteen cents per hour, and effective January 1, 2001, not less than six dollars and forty cents per hour, and effective January 1, 2002,] six dollars and seventy cents per hour, and effective January 1, 2003, not less than six dollars and ninety cents per hour, and effective January 1, 2004, not less than seven dollars and ten cents per hour, or one-half of one per cent rounded to the nearest whole cent more than the highest federal minimum wage, whichever is greater, except as may otherwise be established in accordance with the provisions of this part. All wage orders in effect on October 1, 1971, wherein a lower minimum fair wage has been established, are amended to provide for the payment of the minimum fair wage herein established except as hereinafter provided. Whenever the highest federal minimum wage is increased, the minimum fair wage established under this part shall be increased to the amount of said federal minimum wage plus one-half of one per cent more than said federal rate, rounded to the nearest whole cent, effective on the same date as the increase in the highest federal minimum wage, and shall apply to all wage orders and administrative regulations then in force. The rates for learners, beginners, and persons under the age of eighteen years shall be not less than eighty-five per cent of the minimum fair wage for the first two hundred hours of such employment and equal to the minimum fair wage thereafter, except institutional training programs specifically exempted by the commissioner.

Sec. 2. Subsection (b) of section 31-60 of the general statutes, as amended by section 2 of public act 01-42, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2002*):

(b) The Labor Commissioner shall adopt such regulations, in accordance with the provisions of chapter 54, as may be appropriate to carry out the purposes of this part. Such regulations may include, but are not limited to, regulations defining and governing an executive, administrative or professional employee and outside salesperson; learners and apprentices, their number, proportion and length of service; piece rates in relation to time rates; and shall recognize, as part of the minimum fair wage, gratuities in an amount equal to twenty-three per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry, including a hotel restaurant, and not to exceed thirty-five cents per hour in any other industry, and shall also recognize deductions and allowances for the value of board, in the amount of eighty-five cents for a full meal and forty-five cents for a light meal, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances which may be usual in a particular employer-employee relationship. [Notwithstanding the provisions of this subsection: (1) For the period commencing January 1, 2001, and ending December 31, 2001, such regulations shall recognize, as part of the minimum fair wage, gratuities in an amount equal to (A) twenty-six per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry, including a hotel restaurant, and (B) three and nine-tenths per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities; and (2)] Notwithstanding the provisions of this subsection, for the period commencing January 1, 2002, and ending [December 31, 2002] December 31, 2004, such regulations shall recognize, as part of the minimum fair wage, gratuities in an amount equal to [(A)] (1) twenty-nine and three-tenths per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry, including a hotel restaurant, who customarily and regularly receive gratuities, and [(B)] (2) eight and two-tenths per cent of the minimum fair wage per hour for persons employed as bartenders who customarily and regularly receive gratuities. The commissioner may provide, in such regulations, modifications of the minimum fair wage herein established for learners and apprentices; persons under the age of eighteen years; and for such special cases or classes of cases as the commissioner finds appropriate to prevent curtailment of employment opportunities, avoid undue hardship and safeguard the minimum fair wage herein established. Regulations in effect on July 1, 1973, providing for a board deduction and allowance in an amount differing from that provided in this section shall be construed to be amended consistent with this section without the necessity of convening a wage board or amending said regulations.

Approved May 6, 2002

PA 80-69

SPEAKER ABATE:

The motion before us at this time is a motion to divide. The motion that we pass retain relates to the question pending before the Chamber which is consistent, of course, Rep. Shays, with the ruling that I made earlier today. So, the matter pending before this Chamber for action at this time, is that we divide the question. The motion that we pass retain relates to the question pending which is the motion to divide. Will you remark on the motion that we pass the question pending retaining its place for action.

REP. BALDUCCI: (27th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Balducci.

REP. BALDUCCI: (27th)

Mr. Speaker, I think I oppose the motion to pass retain. If we are going to divide the question, and if I understand the possibility of what the division will be, this bill is more or less a package and a compromise that has been worked out in which forty eight hours has been lowered or changed to forty hours, and a percentage or an index replacing the sixty cents which had previously been the method of removal on wages for waitresses. The original proposal last year dealt with the twenty-six to twenty-eight percent increase. This one is a flat twenty-three

percent across the board. And I feel if we end up pass retaining this particular bill, I don't think it's going to solve or resolve the problem. I think the entire piece of legislation need be before this Chamber as one bill. And therefore, I oppose that motion.

SPEAKER ABATE:

Will you remark further on the motion?

REP. GROPPO: (63rd)

Mr. Speaker.

SPEAKER ABATE:

Rep. John Groppo.

REP. GROPPO: (63rd)

Mr. Speaker, on the question of pass retaining -- I oppose the pass retaining this, Mr. Speaker. At least, I try to be consistent. The bill is presently before us, has been before us. The question to divide the question would certainly scuttle the bill, and I think that an agreement was made as the Chairman of the Labor has indicated, and I think we ought to adhere to his commitment and defeat the motion to pass retain. And we should pass the bill.

SPEAKER ABATE:

Will you remark further on the motion? Will you remark further on the motion? If not, all those in favor, please indicate by saying, aye.

REPRESENTATIVES:

Aye.

SPEAKER ABATE:

All those opposed, nay.

REPRESENTATIVES:

Nay.

SPEAKER ABATE:

The motion fails.

The matter before us at this time, is a motion to divide the question. Rep. Otterness, since you are the proponent of the motion, Madam, you are required pursuant to the provisions set forth in Mason's Manual of Legislative Procedures to set forth for this Chamber specifically the question that you wish divided. Would you proceed please, Madam?

REP. OTTERNESS: (42nd)

I'll withdraw my motion.

SPEAKER ABATE:

The motion has been withdrawn.

Will you remark further on this bill? Will you remark further on the bill? If not, would all the members please be seated? Would all staff and guests please come to the well of the House? The machine will be opened. Would all staff and guests please come to the well of the House.

THE CHAIR:

Will you remark further? Hearing no objection, it may be placed on the consent calendar.

THE CLERK:

Moving to page 24 of the calendar, Calendar No. 232, File No. 106, House Bill No. 5667. An Act Concerning The Minimum Wage Gratuity Allowance And The Workweek For Certain Establishments with a favorable report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Skelley.

SENATOR SKELLEY:

Mr. President, I move for acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Yes, Mr. President. This bill does two things. It takes away the flat 60¢ allowance that is currently deducted from the minimum wage for waitresses and increases that to 23% of the minimum wage. It also eliminates from 48 to 40 hours the amount of time that an individual has to spend in certain industries in receiving their overtime payments. The bill's a compromise. It passed our committee unanimously and I ask that it be placed on the consent calendar.

THE CHAIR:

Hearing no objection, so ordered.

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federal government is also talking about a minimum wage increase. I think it's the right time. I can only recall two other times that we've done something like this and I think its time has come, so I rise in support of it. Thank you Madam Speaker.

DEP. SPEAKER CURREY:

Thank you sir. Representative Prelli of the 63rd.

REP. PRELLI: (63rd)

Thank you Madam Speaker. Madam Speaker there's some new language in the bill that I really don't understand and I find it hard to ask a question because I think we all know what a bartender is. But through you a question to Representative Donovan. Could you explain to me where bartender is defined in any of the labor statutes? Through you Madam Speaker.

DEP. SPEAKER CURREY:

---Representative Donovan.

REP. DONOVAN: (84th)

Through you Madam Speaker, the word bartender is certainly used as to clarify an individual who works in the restaurant industry and the language that deals with the language in the amendment deals with the fact that that bartender is the person who customarily receives gratuities. Through you Madam Speaker.

DEP. SPEAKER CURREY:

0032 0

Representative Prelli.

REP. PRELLI: (63rd)

Thank you Madam Speaker. Madam Speaker, is a bartender a person who only mixes drinks, or could it be a waitress who has to go and get glasses of wine? Would that be considered a bartender? Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Donovan.

REP. DONOVAN: (84th)

Through you Madam Speaker, a bartender is a person who mixes drink as opposed to a waitress. Through yo Madam Speaker.

DEP. SPEAKER CURREY:

Representative Prelli.

REP. PRELLI: (63rd)

Thank you Madam Speaker. Madam Speaker in a lot of the small restaurants around the state they don't a have full time bartender. They have waitresses and they mix all the drinks for the individual. Through you Madam Speaker would that waitress then be considered a bartender?

DEP. SPEAKER CURREY:

Representative Donovan.

REP. DONOVAN: (84th)

Through you Madam Speaker, no.

DEP. SPEAKER CURREY:

Representative Prelli.

REP. PRELLI: (63rd)

Through you Madam Speaker, if the bartender was working at a bar standing behind the bar mixing drinks, and as part of that somebody sitting at the bar decided to have something to eat, would that bartender now be considered a waitress? Through you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Donovan.

REP. DONOVAN: (84th)

Through you Madam Speaker, no. Thank you Madam Speaker.

DEP. SPEAKER CURREY:

Representative Prelli.

REP. PRELLI: (63rd)

Well, Madam Speaker, I understand the intent and I understand the dialogue here, that's why I'm asking the question. I'm not sure what a bartender is. Because I don't think there are a lot of places that first of all the state of Connecticut it's required if you have a bar or cafe license that you also serve food. In a lot of those the bar tender has to serve food. Some of the food we wouldn't all like to enjoy eating, but they must

serve the food.

Are they then bartenders? I don't think so I think they would then be classified as waiters or waitresses. If, in many of the restaurants out my way they also have a liquor permit but they don't have bartender on duty, the waiter or waitress have to serve. We have no definition here. I don't know how many times we're going to have labor cases to decide who is covered and who isn't covered. So I think that's another, as we were talking about flaws in this particular amendment along with the 15 year-old here's another definition that's made. And it's another definition that we don't know exactly how that's defined.

Could it be defined later on? It will probably be defined the first time we have a labor relations case on this an that's where it's going to defined. I'm not sure I'm ready to vote that way. We've been hearing talk about there's been increase, that this is going to be an increase that it's still going to be lower than Massachusetts but we're going to be higher than New York and Rhode Island and as I look at it -- we have to look at it maybe in a little different way than we might be looking at it.

This is the second time in two years that we've been asked to vote on this, three years, because we'll

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Seeing no objection, the rules are suspended for the immediate transmittal. Clerk please call Calendar 331.

CLERK:

One page 24, Calendar 331, substitute for HB5057, AN ACT INCREASING THE MINIMUM WAGE, favorable report of the Committee Appropriations.

DEP. SPEAKER HYSLOP:

Representative Donovan.

REP. DONOVAN: (84th)

Good afternoon Mr. Speaker.

DEP. SPEAKER HYSLOP:

Good afternoon.

REP. DONOVAN: (84th)

Mr. Speaker I move acceptance of the Joint Committee's favorable report and passage of the bill.

DEP. SPEAKER HYSLOP:

Question is on acceptance and passage, will you remark?

REP. DONOVAN: (84th)

Thank you Mr. Speaker. Mr. Speaker, this bill would increase the minimum wage for workers in the State of Connecticut to $6.90 as of January 1, 2003 and $7.10 January 1, 2004. The bill also includes the current tip credit amount for th[illegible] who customarily and regularly

receive tips, which includes waiters, waitresses and bartenders. I move passage.

DEP. SPEAKER HYSLOP:

Question is on acceptance will you remark?

REP. DONOVAN: (84th)

Yes Mr. Speaker. Mr. Speaker the Clerk is in possession of an amendment, LCO 3316. I ask that the Clerk call and I be allowed to summarize.

DEP. SPEAKER HYSLOP:

Clerk please call LCO 3316, to be designated House "A" and the Representative has asked leave to summarize.

CLERK:

LCO 3316, House "A" offered by Representative Donovan.

DEP. SPEAKER HYSLOP:

Representative Donovan.

REP. DONOVAN: (84th)

Yes, thank you Mr. Speaker. Mr. Speaker as I mentioned earlier there is tip credit that employers can use in calculating the minimum wage for those people - waiters, waitresses and bartenders - and in talking to the Office of Legislative Research we thought to clear up any confusion over waiters, waitresses and bartenders that we make the language to be consistent.

So the language which we changed actually in line

71, add to the waiters and waitresses the same language that we have for bartenders, which would say who customarily and regularly receive gratuities and I move adoption.

DEP. SPEAKER HYSLOP:

Question is on adoption of House "A" will you remark on House "A"? Will you remark on House "A"? Representative Cafero.

REP. CAFERO: (142nd)

Thank you Mr. Speaker. A question through you to the proponent of the amendment?

DEP. SPEAKER HYSLOP:

Please frame your question.

REP. CAFERO: (142nd)

Through you Mr. Speaker to Representative Donovan. What is the difference between this amendment and what we passed out of labor with regard to this particular issue? Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Donovan.

REP. DONOVAN: (84th)

If I may, the bill was amended in Appropriations so that made a change. The amendment just deals with, we have two sections of people who receive tips waiters and waitresses people in the hotel and restaurant industry,

and bartenders. We have the language for waiters and waitresses has been around for some 50 years, it didn't use the words customarily and regularly receive tips though that is certainly the understanding that is what the regulations call for, that's what we use. When the bartenders were added we put that language in and legislative research thought there was some confusion there, we wanted to clarify it.

We're talking about the same group of people. And that's all it does, it's a technical amendment more than anything.

DEP. SPEAKER HYSLOP:

Representative Cafero.

REP. CAFERO: (142nd)

Thank you Mr. Speaker, again through you to Representative Donovan. You referenced that the bill was also amended in Appropriations. It was amended with regard to this issue of employees who receive gratuities? Through you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative Donovan.

REP. DONOVAN: (84th)

Through you Mr. Speaker, yes it was. Actually not specifically to this amendment. But it dealt with the issue of the tip credit. The tip credit is 23% and

without any change it would be 23% less of the minimum wage. The bill was amended to raise to 29.3%, which is actually the current rate this year, which runs out at the end of this year.

REP. CAFERO: (142nd)

Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Will you remark on House "A"? Will you remark on House "A"? If not we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEP. SPEAKER HYSLOP:

Those opposed? The ayes have it, House "A" is adopted. Will you remark further on the bill as amended? Representative Donovan.

REP. DONOVAN: (84th)

Thank you Mr. Speaker. Again, you know I'm here on the floor talking about increasing the minimum wage. Certainly this bill would affect those who are the lowest paid workers in this state. I have to think about who they are, they tend to be recently laid off workers trying to find work, low skilled employees, disabled people, former welfare recipients, students, elderly, the poor.

The demographics are that from the statistics that I've found that 40% are sole bread winners in the family, two-thirds are women, 70% - 85% are adults and we actually heard testimony that 20% of the homeless are in shelters are employed. So this bill would raise the wages for those workers.

We certainly want those workers to receive a minimum standard of living. I think the bill, we've been able to work out the tip credit with the restaurant industry. They're supporting the bill before us. We think the increase is a modest one, I certainly urge the body here to support it. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Will you remark further? Representative Sawyer.

REP. SAWYER: (55th)

Thank you Mr. Speaker. A question for Representative Donovan please.

DEP. SPEAKER HYSLOP:

Please proceed with your question.

REP. SAWYER: (55th)

Sir could you please tell me currently what the minimum was is in the surrounding states New York, Massachusetts, and Rhode Island sir?

DEP. SPEAKER HYSLOP:

Representative Donovan.

there. It's been, I've been here ten years and for ten years we've been trying to do it right and we haven't done it yet. We can't depend on property taxes so the more affluent cities have to have better school systems than we have in the inner city. And so being able to pay someone a few dollars to make a decent living and that is a few dollars. This is the most expensive state in the country in which to live, so comparing us with those states that are around us is an unfair comparison.

I just was in Massachusetts, my family lives there. What they pay for rent, what they pay for food, what they pay for other things is no where near what it costs to do in the State of Connecticut, so I find that argument to be a little bit lacking in substance. And, once again, until we have the political will to do the Sheff versus O'Neill case in the way it should be done we will never get the ratcheting up of experience that is needed by our young people in the State of Connecticut, especially those in the inner cities. Thank you Mr. Speaker.

DEP. SPEAKER HYSLOP:

Representative O'Connor.

REP. O'CONNOR: (35th)

Thank you Mr. Speaker. I have some reservations about raising the minimum wages at this time,

particularly since the economy is unstable and not on sure foot and the cost of doing business is just too high right now. I hear it all the time from our small business owners, the mom and pop shops. This is not going to affect the corporations, which a lot of people want to take it out on.

I think if we really want to do something for the folks that the proponents of this bill are trying to help is to pass a bill on the earned income tax credit. I think this is a more viable option and I think it's something that we should pursue in the future. That being said, I do support some of the provisions on the hotel and restaurant tip credit. It's vitally important to the restaurant and tourism areas in my district. And because of that at this point in time I'm really torn on this bill and will be making my decision in the next few moments. Thank you.

DEP. SPEAKER HYSLOP:

Will you remark further on the bill as amended? Will you remark further on the bill as amended? If not, staff and guests to the well of the House, the machine will be open.

CLERK:

The House of Representatives is voting by roll call, members to the Chamber. The House is voting by

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Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. Nothing in this bill changes in terms of who is eligible for the minimum wage, who is eligible for less than the minimum wage because it's a training wage or because they get servers' wages with a tip credit or because they get bartenders' wages with a separate tip credit.

To collect tips from customers and then withhold those tips from services is called wage theft, and in the states around us, wage theft is punished by not just for storing the wages but double penalties. We may address that later in the Session, but in this bill we do not.

However, it is still called wage theft and is worth reporting to the Department of Labor.

For veterans' organizations or other places where there are servers who are not allowed to collect tips and nobody collects tips in their names, then they are expected to be paid the straight minimum, at least the straight minimum wage because there are no tips to be offset by a tip credit.

Thank you very much, Mr. Speaker, I hope that answers the question, through you, sir.

That's what we're considering here tonight. I think this is the right thing to do and I believe the facts show that. Thank you for this opportunity, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Carter of the 2nd District, sir, you have the Floor.

REP. CARTER (2nd):

Thank you very much, Mr. Speaker. You know, ladies and gentlemen, I definitely understand what my good colleague just mentioned across the aisle with respect to studies.

You know, frankly, there have been a lot of studies done about the minimum wage and I would take issue with the fact that they've all conclusively proven that the minimum wage has no effect on employability or the economy because it does.

There are a number of studies out there that show that it affects job growth when you raise the minimum wage. There are fewer people who may hire multiple people. I think one of the business owners here tonight said that you know, if you've got a couple of people who are going to be waitresses, or I shouldn't say waitresses, but let's say kitchen people, if

you're going to pay them a higher wage you may not be able to hire two, and I think that's a real issue.

We're talking about when somebody might be a pizza guy. Well, it's going to be a lot more difficult for somebody to hire an extra pizza delivery guy when you're going to be paying a higher minimum wage, and we certainly see that with respect to our nonprofits, which I mentioned earlier tonight.

You know, I know that my YMCA is going to take a $50,000 hit next year, you know. What does 50 grand mean to the programs for YMCA? You know, is it going to mean that we're not going to be able to offer as many scholarships for kids to come in free. I mean, that's what the YMCA does.

It's not about, you know, just a business. It's about doing something good in our community and there are going to be a lot of kids who aren't going to have the ability to come to camp just because we raised the minimum wage.

You know, economies are a strange thing. I've had the feeling in this building and in this, I should say this professional politics, that people believe that we don't affect the economy as much as we really do. I think there's a sense that our economy just

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Madam President, the Clerk is in possession of LCO Amendment Number 7780. I move the amendment and seek leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 7780, Senate Amendment Schedule "A", offered by Senator Osten, et al.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Madam President, this --

THE CHAIR:

Do you move the adoption, Ma'am?

SENATOR OSTEN:

I move adoption of the amendment.

THE CHAIR:

Motion is on adoption.

Will you remark, Ma'am?

SENATOR OSTEN:

Madam President, the -- the amendment is a very basic amendment. It changes the amount of the minimum wage recommended in the underlying bill from January 1, 2014 to 45 cents, January 1, 2015 to 30 cents. It keeps the tip credit, what most people refer to as the tip credit, as it is and it keeps a training wage incorporated into the underlying bill.

THE CHAIR:

1994 WL 162415

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut, Judicial District of Hartford-New Britain, at Hartford.

STATE of Connecticut LABOR DEPARTMENT

v.

AMERICA'S CUP, et al.

No. CV 92 0516750.

April 15, 1994.

MEMORANDUM OF DECISION ON MOTION FOR SUMMARY JUDGMENT

MARY R. HENNESSEY, Judge.

*1 The State of Connecticut, Labor Department, filed a two count complaint on September 28, 1992, against the defendants, America's Cup, and Frank Maratta, president of Waterfront Restaurants, Inc., a partner in America's Cup. The State alleges that the defendants, as employers within the State of Connecticut, failed to pay the minimum and/or overtime wages to approximately seventy employees (hereinafter "complainants"). The State seeks to collect double damages for these unpaid wages, pursuant to § 31-72.

On December 2, 1992, the State filed a motion for summary judgment with an accompanying memorandum of law. Attached to the State's motion for summary judgment is a "Stipulated Statement of Facts In Lieu of Affidavit," dated December 2, 1993, (hereinafter "stipulation") signed by all the parties. The parties stipulate that the defendant America's Cup is a restaurant within the meaning of Labor Department regulations (hereinafter "regulations") § 31-62-E1 through E4, and that the complainants were employed by America's Cup as bartenders. The stipulation further states:

> 15. The parties agree that if the complainants are "non service employees" within the meaning of Regulation 31-62-E2(d) of the Department of Labor, then the "tip credit" may not be taken and the defendant is liable for the amount in dispute, to the plaintiff.
>
> 16. The parties further agree that if the complainants are "service employees" within the meaning of Regulation 31-62-E2(c) of the Department of Labor, then the "tip credit" may be taken and the defendant is not liable for payment of the amount in dispute.

1. *Labor Department Regulations.*

General Statutes § 31-60(b) requires the adoption of regulations recognizing certain gratuities as part of the minimum wage. [1] This statute states in part,

1 "Gratuities" means a voluntary monetary contribution received by the employee directly from a guest, patron or customer for service rendered. § 31-62-E2(e).

> The labor commissioner ... shall make such regulations as may be appropriate to carry out the purposes of this part. Such regulations ... shall recognize, as part of the minimum fair wage, gratuities in an amount equal to twenty-three per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry.... [2]

2 Public Act 80-64 made recognition of gratuities mandatory.

Regulations § 31-62-E2(c) and (d), adopted pursuant to § 31-60, distinguish a "service employee" from a "non-service employee" of a restaurant.

> "Service employee" means any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. "Non-service employee" means an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons at tables or booths and who do not customarily receive gratuities as defined above.

(Emphasis added.) Section 31-62-E2(c) and (d). Pursuant to regulations § 31-62-E1 et seq., if the complainants are

found to be service employees, the defendants are entitled to recognize, as part of the minimum fair wage, gratuities received by the employee. However, if the complainants are determined to be "non-service employees," the complainants are entitled to receive the full minimum fair wage.

*2 Section 31-62-B4 sets forth the rule for determining whether a restaurant employee who performs both service and non-service duties may have gratuities applied as part of the minimum fair wage.

> If an employee performs both service and non-service duties, and the time spent on each is definitely segregated and so recorded, the allowance for *gratuities as permitted as part of the* minimum fair wage may be applied to the hours worked in the service category. If an employee performs both service and non-service duties and the time spent on each cannot be definitely segregated and so recorded, or is not definitely segregated and so recorded, no allowances for gratuities may be applied as part of the minimum fair wage.

"The minimum wage law ... should receive a liberal construction as regards beneficiaries so that it may accomplish its purpose." *Shell Oil Co. v. Ricciuti,* 147 Conn. 277, 283, 160 A.2d 257 (1960), citing *West v. Egan,* 142 Conn. 437, 442, 115 A.2d 322 (1955); see *Rising Sun Enterprises, Inc. v. Frank Santagulta, Commissioner,* Superior Court, judicial district of Hartford, Docket No. 132588 (April 6, 1979, Graham, J.). "This applies no less to the rules and regulations adopted by an administrative agency under its delegated authority to implement those laws." *Rising Sun Enterprises, Inc. v. Frank Santaguita, Commissioner,* supra.

"The legislative policy of the minimum wage law is to establish a wage fairly and reasonably commensurate with the value of a particular service or class of service rendered." *West v. Egan,* supra, 443. "In furtherance of that principle, it is essential that exemptions or exclusions be strictly and narrowly construed. The burden rests on the employer to establish that his employees come within an exemption. Whether particular employees are within the coverage of the law must be determined in each case on its own particular facts." (Citations omitted.) *Shell Oil Co. v. Ricciuti,* supra.

2. *Attacking the Validity of the Regulations.*

The defendants contend that the definitions of "service employee" and "non-service employee" in the regulations create "an arbitrary restriction [that] goes beyond the mandate of the enabling legislation [General Statutes § 31-60]." (Defendants' Memorandum in Opposition, December 24, 1993, p. 4.) Specifically, the defendants argue that by arbitrarily differentiating between tipped employees on the basis of the size and shape of the eating platform, the regulations have unfairly and improperly narrowed the legislative intent.

The State opposes, however, the defendants ability to presently attack the validity of the regulations. First, the State contends the defendants have waived the right to object to the validity of the regulations, as a result of paragraphs 15 and 16 of the stipulation. Second, the State asserts that pursuant to General Statutes § 31-63, the defendants have not followed the statutorily mandated procedure for a determination of the validity of the regulations.

*3 General Statutes § 31-63 states in part:

> Any person in interest in any occupation for which any administrative regulation or a minimum fair wage order has been issued under the provisions of this part [Chapter 558, "Wages"] who is aggrieved by such regulation or such order may obtain a review of such regulation or such order in the superior court by filing an appeal pursuant to the provisions of Chapter 54 [Uniform Administrative Procedure Act].

Pursuant to this section, the defendants' challenge to the validity of the regulations, as a violation of the legislative mandate of General Statutes § 31-60, is not appropriate at this time.

The defendants have waived the right to object to the validity of the regulations at issue at the present time, given paragraphs 15 and 16 of the stipulation. Accordingly, the dispositive issue before the court necessary to the State's motion for summary judgment is whether the complainants

are "service employees" or "non-service employees," as defined by § 31-62-E2(c) and (d) of the Labor Department regulations.

3. *The Parties' Arguments.*
The State contends that the complainants are not "service employees," as defined in the regulations and thus are entitled to receive the full minimum wage. Specifically, the State argues that pursuant to the stipulation, the complainants' employment duties did not relate "solely to the serving of food and/or beverages to patrons seated at tables or booth." Section 31-62-E2(c). Accordingly, the State concludes that, pursuant to § 31-62-E2(d), the complainants are non-service employees legally entitled to receive the full minimum wage.

If the regulations are not found to be invalid, the defendants alternatively contend that the complainants, as bartenders, are "service employees," given the intent and mandate of the legislature to allow for a tip credit where gratuities are customarily given. The defendants attack the restrictive application of the requirement of § 31-62-E2(c) that "service employees" serve "patrons seated at tables or booths," as opposed to the elongated bars in question. Accordingly, the defendants assert that the definition of "table" should include the bars in question, in that food is regularly served on these bars and the regulations do not specifically exclude such bars while otherwise excluding classifications of persons serving at "counters."

4. *Analysis.*
The material facts in this case are not in dispute. The complainants, employed by the defendants as bartenders, worked in the bar/lounge area and outside patio area of the restaurant. These areas consisted of "long counters (the "bar") behind which the bartenders primarily performed their duties, barstools in front of the bar where customers sat, and chairs and tables setup throughout the area at which customers could sit." (Stipulated Statement of Facts, paragraph 4.) The parties stipulate that the complainants received both an hourly wage and gratuities. (Stipulated Statement of Facts, paragraph 5.)

*4 The duties of the complainants, the crucial element in determining whether they constitute "service employees," are described in paragraph six of the stipulation, as follows:

(a) Bar and Patio setup.

(b) Preparation of alcohol and non-alcohol beverages and the opening of beverage containers for service to customers.

(c) Serving of beverages to customers sitting and standing at the bar.

(d) The taking of food orders from customers seated at the bar.

(e) The service of food orders to customers seated or standing at the bar.

(f) Waiting on tables for food and beverage service in the lounge and patio areas, as further noted below, when waitpersons were not available.

(Emphasis added.) The stipulation further states that "[a]ll such food and drink orders were served at the bar, and not at the tables or booths in the lounge and patio areas." (Stipulated Statement of Facts, paragraph 11.) Two or three days a week, usually during week days, lunch time, and the winter season, one or more designated bartenders would be responsible for servicing the customers seated at the tables or booths. However, when the bartenders serviced customers seated at the tables or booths, "the time spent by the bartenders waiting at tables was not segregated by the defendant Employer from time spent tending bar. Rather, all time was recorded as one block of time on the employees records, which continue to designate the personnel involved as 'bartenders.' " (Stipulated Statement of Facts, paragraph 13.)

The facts, as stipulated by the parties, fail to demonstrate that the complainants are "service employees" within the definition of § 31-62-E2(c). The complainants' duties, as set forth above, do not "relate solely to the serving of food and/or beverages to patrons seated at tables or booths and to the performance of duties incidental to such service...." (Emphasis added.)

Furthermore, paragraph thirteen of the stipulation directly implicates regulation § 31-62-E4. While the facts do indicate that the complainant performed some "service" duties (see paragraph twelve), the time spent on "service" and "non-service" duties was not definitely segregated and so recorded. Accordingly, pursuant to regulation § 31-62-E4, the defendants should not be permitted to pay the complainants less than the full minimum fair wage. This court concludes that the State is entitled to judgment as a matter of law. The motion for summary judgement is granted.

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2001 WL 1042594

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut.

BACK BAY RESTAURANT GROUP, INC.,

v.

STATE OF CONNECTICUT DEPARTMENT OF LABOR.

No. CV000504360S.

Aug. 14, 2001.

MEMORANDUM OF DECISION

COHN, J.

*1 This is an appeal by the plaintiff, Back Bay Restaurant Group, Inc., from a declaratory ruling issued by the defendant, State of Connecticut Department of Labor ("the Department"), concluding that the Department's regulations on the "tip credit" for restaurant employees were valid. The plaintiff sought its declaratory ruling under General Statutes § 4-176 and on issuance of the declaratory ruling took an appeal pursuant to § 4-183.

The specific declaratory ruling sought was stated as follows: "Regulation 31-62-E2(c) and (d) should ... be invalidated to the extent it denies employers the minimum wage credit for employees who serve food at a bar or counter rather than a table or booth because this distinction is made on the basis of platform at which a patron is served rather than the employee's actual job duties." (Return of Record ("ROR"), Item 1, p. 5.)

The following relevant facts were set forth by the Department in the declaratory ruling now being challenged:

1. Section 31-60(b) of the Connecticut General Statutes requires the Department of Labor to adopt regulations recognizing certain gratuities as part of the minimum wage. Specifically, this section provides in relevant part as follows:

The Labor Commissioner ... shall make such regulations as may be appropriate to carry out the purposes of this part. Such regulations ... shall recognize, as part of the minimum fair wage, gratuities in an amount equal to twenty-three percent of the minimum fair wage per hour for person employed in the hotel and restaurant industry ...

2. Pursuant to this statutory provision, the Connecticut Department of Labor issued Regulation § 31-62-E2(c) and (d), effective November 25, 1958.

3. This Regulation distinguishes a "service" employee from a "non-service" employee. A service employee is defined as "any employee whose duties relate solely to the serving of food and/or beverages to patrons seated at tables or booths and to the performance of duties incidental to such service, and who customarily receives gratuities." § 31-62-E2(c) and (d). A non-service employee is defined as "an employee other than a service employee, as herein defined. A non-service employee includes, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverages to patrons at tables or booths and who do not customarily receive gratuities as defined above." § 31-62-E2(c) and (d).

4. Pursuant to this Regulation, an employer may recognize as part of the minimum wage, gratuities received by a service employee up to 23% of the minimum fair wage. No recognition or credit toward the minimum fair wage may be taken with respect to gratuities received by a non-service employee. [1]

[1] This factual finding is uncontested by the parties. (See Petitioner's Response to the Court's Order Dated 5/31/01; Response of the State of Connecticut to the Court's Order Dated 5/31/01; see also Regs., Conn. State Agencies § 180-2 (1951), entitled Defining and Governing Gratuities as Part of the Minimum Fair Wage, which provides: "For purposes of this regulation ... gratuities shall mean a voluntary monetary contribution received by the employee directly from a guest, patron or customer for *service* rendered.") This early distinction between service and non-service employees is found in § 31-62-E2(c) and (d) of the Regulations of Connecticut State Agencies (defining service and non-service employees). In addition, § 31-62-E4 of the Regulations of Connecticut State Agencies allows the employer to segregate the duties of an employee, so that the credit applies to the "service category."

5. The Connecticut Department of Labor's Guide for Restaurant Employers in Connecticut describes the typical duties of a service employee as follows:

(a) Taking food and beverage orders from patrons.

*2 (b) Bringing the orders to the table or booth.

(c) Cleaning up the immediate area of service.

(d) Filling the condiment containers at the tables or booths.

(e) Vacuuming their own immediate service area.

(f) Replacing the table setting at their own service area.

6. The Connecticut Department of Labor's Guide for Restaurant Employers in Connecticut describes the typical duties of a non-service employee as follows:

(a) Cleaning the rest rooms.

(b) Preparing food.

(c) Washing dishes.

(d) Host or hostess work.

(e). General set-up work before the restaurant opens.

(f) Kitchen clean-up.

(g) General cleaning work.

(h) Waiting on takeout customers.

7. Petitioner has employees at its restaurants who work primarily behind the bar, which is a long counter with bar stools around it.

8. A bartender's job duties consist solely of serving food and beverages to customers at the bar, and duties incidental thereto, including:

(a) Bar set up.

(b) Preparation of alcoholic and non-alcoholic beverages and the opening of beverage containers for services to customers.

(c) Serving of beverages to customers sitting or standing at the bar.

(d) Serving of food orders to customers seated or standing at the bar.

(e) Waiting on tables for food and beverage service in the lounge area, when waitpersons are not available.

9. Bartenders at petitioner's restaurants customarily receive gratuities for serving food and beverages to customers standing or seated at the bar or in the lounge area.

10. Because these bartenders' duties are overwhelmingly for the benefit of patrons standing or seated at the bar, and not patrons "seated at tables and booths," petitioner is unable to avail itself of a credit toward satisfying the minimum fair wage.

(ROR, Item 23, pp. 3-5.)

Based upon these facts, the Department concluded as follows: "[T]he regulations at issue in this ruling are not invalid as they apply to bartenders because the petitioner has not demonstrated: 1) that bartenders meet the strict definition of "service" employee; 2) that the regulatory distinction between "service" and "non-service" employee is arbitrary because it is based exclusively on the size and shape of the platform at which patrons are served rather than the actual duties performed; 3) that the actual duties performed by bartenders for patrons at the bar are substantially the same as the duties performed by "service" employees for patrons seated at "tables or booths"; or 4) that it should be able to avail itself of the tip credit for those bartenders' occasional duties of a "service" nature despite failing to segregate and record those duties in accordance with Conn. State Agencies Regs. § 31-62-B4." (ROR, Item 23, p. 13.)

The plaintiff has appealed from the Department's conclusion that the regulations distinguishing between service employees and non-service employees are valid. [2]

2 Since the declaratory ruling continued to impose the challenged regulations upon the plaintiff, aggrievement is found.

*3 The standard of review of the declaratory ruling, as it involves interpretation of regulations, has been set forth in the case of *Bridgeport Hospital v. Commission on Human Rights & Opportunities*, 232 Conn. 91 (1995). "We recognize our usual rule of according deference to the construction given a statute by the agency charged with its enforcement ... Deference may be appropriate when the issue is the application of general statutory language to a particular fact-bound controversy. As we have stated many times, the factual and discretionary determinations of administrative

agencies are to be given considerable weight by the courts ... however, it is for the courts, and not for administrative agencies, to expound and apply governing principles of law." (Brackets omitted; citations omitted; internal quotation marks omitted.) *Id.*, 109. "Although the court may not substitute its own conclusions for those of the administrative board, it retains the ultimate obligation to determine whether the administrative action was unreasonable, arbitrary, illegal or an abuse of discretion ..." (Citations omitted.) *United Parcel Service, Inc. v. Administrator*, 209 Conn. 381, 385-86 (1998).

The first claim made by the plaintiff is that the General Statutes § 31-60(b) does not authorize the regulations at issue. It is true that "[t]he power of an administrative agency to prescribe rules and regulations under a statute is not the power to make law, but only the power to adopt regulations to carry into effect the will of the legislature as expressed by the statute ..." (Citations omitted; internal quotation marks omitted.) *Breen v. Department of Liquor Control*, 2 Conn.App. 628, 635, cert. granted, 194 Conn. 808 (1984), remanded, 5 Conn.App. 432 (1985). It becomes necessary to examine § 31-60(b), as well as its "legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation" to arrive at will of the legislature. *General Motors Corp. v. Dohmann*, 247 Conn. 274, 286 (1998).

The statute came into effect through enactment of Public Act 1951, No. 51-352, § 10(b) providing: "The labor commissioner, after consultation with a board composed of not more than three representatives each of employers and employees in the occupation or industry affected and of an equal number of disinterested persons representing the public, shall make such administrative regulations as may be appropriate to carry out the purposes of this act and [specific sections] of the general statutes. Such regulations ... may recognize as part of the minimum fair wage ... gratuities ..."

In the General Assembly's Labor Committee prior to the passage of the Public Act, a representative of the Connecticut restaurant association described that there were some restaurants where workers take on all tasks-"porter, dishwasher, cook, waiter and cashier." Conn. Joint Standing Committee Hearings, Labor, 1951 Sess., p. 106. The minimum wage of seventy-five cents was not enough for them. Then there were "wages of ... waiters and waitresses ... to a large extent dependent on gratuities. Our laws have been in existence for a long time. Payment of overtime and the abolition of gratuities will revise the restaurant industry tremendously." Conn. Joint Standing Committee Hearings, Labor, 1951 Sess., p. 107.

*4 In the House of Representatives proceedings, the Chairman of the Labor Committee, Simon S. Cohen, explained the Public Act prior to its approval in part as follows: "This bill would create a minimum wage of 75 cents per hour by statute ... Provision is made whereby the commissioner, with the advice of the board appointed for that purpose, may establish administrative regulations recognizing unusual conditions of employment. And such regulations may also recognize conditions ... where compensation is based in part on commissions and bonuses or special pay for special or extra work ..." 4 H.R. Proc., Pt. 5, 1951 Sess., p. 1307.

The statute was unchanged in the 1953 and 1955 legislative sessions. In 1957, the minimum wage was increased to one dollar, but was left at seventy-five cents for restaurant employees. Public Act 1957, No. 57-435, § 5. The 1959 legislature saw an effort to raise the minimum wage for restaurant employees to one dollar. In addition, this proposed legislation attempted to remove the credit that might be taken from the minimum wage for gratuities. Labor Commissioner Ricciuti appeared before the Labor Committee on February 15, 1959, to speak in favor of eliminating the gratuity credit. "The bill also seeks to eliminate from the minimum wage law the provision under which the employers can deduct from the minimum wage for gratuities-that is for tips ... [W]hen you go into a restaurant ... why [should] that tip indirectly go into the pockets of the employer ... and this bill would eliminate the provision of the minimum Wage Law which now makes it possible." Conn. Joint Standing Committee Hearings, Labor, 1959 Sess., pp. 78-79. "[In a controversy with one employer], [t]he waiters themselves have .35 an hour deducted for gratuities per hour. These waiters have the services of busboys who help them clear tables and bring the dessert or something like that. In addition to having the .35 deducted from their wages, the waiters also have to pay for the tips which go to the busboys. In other words, they're getting a double deduction ..." Conn. Joint Standing Committee Hearings, Labor, 1959 Sess., pp. 78-79.

As might be expected, the restaurant association opposed the proposal to eliminate the gratuity credit. The industry had no problem in paying the full minimum wage to countermen, chefs, cooks or bartenders. "The fly in the ointment is on

waiters ... The bartender has to know how to mix his drinks. The waiter brings this in and he serves it to you and when you are talking about doing away with gratuities, you're doing away with something that is not only a Connecticut practice, a national practice but an international practice." Conn. Joint Standing Committee Hearings, Labor, 1959 Sess., pp. 87-88 (H.A.Genlot).

In the end, the legislature in Public Act 1959, No. 59-683 did not eliminate the credit, but, instead of merely using the term "gratuities," set the amount of the credit at thirty-five cents. It also raised the minimum wage for restaurant workers to one dollar. "This bill has two purposes to correct certain inequities which exist under the present Min. Wage Laws of the state and to make some technical corrections in the present law which would aid in its administration. One inequity concerns restaurant and hotel employees. This bill proposes to bring them within the min. wage rate of $1 an hour. Restaurant and hotel workers were included when the statutory rates were fixed at .75 an hr. in 1951, but were excluded when it was raised to $1 in 1957. The committee feels there is no reason for excepting these workers from the full raise and the exclusion from this law is discriminatory!" 8 H.R. Proc., Pt. 13, 1959 Sess., pp. 6086-87.

*5 In subsequent years, the amount of the credit was increased, eventually to sixty cents. In 1980, by Public Act 1980, No. 80-64, it was changed to 23% of the hourly wage. While the committee chairman on the floor of the House of Representatives described the bill that became law as worthy of passage, Representative Otterness disagreed: "I'd just like to briefly remark that I felt it was a very bad bill last year, and it hasn't really improved very much. I think the part that does reduce the forty-eight to forty hours for overtime is definitely an improvement, but I don't think that it is enough to overcome the part that we're doing in the first part, which is really an erosion of the minimum wage. And if we believe that people should have a minimum wage, then I think we should vote against this bill. And I think that we should also consider the fact that this is impacting on women. Mostly women who are in entry level jobs, who are coming back into the work force." 23 H.R. Proc ., Pt. 3, 1980 Sess., p. 861. Later in the debate, Representative Balducci sought to diffuse these concerns: "[T]his bill is more or less a package and a compromise that has been worked out in which forty-eight hours has been lowered or changed to forty hours, and a percentage or an index replacing the sixty cents which had previously been the method of removal on wages for waitresses." 23 H.R. Proc., Pt. 3, 1980 Sess., p. 865.

On the floor of the House of Representatives in 2000, while raising the minimum wage, an amendment was adopted that eventually became P.A. No. 00-144. Section 31-60(b) of the General Statutes, in its current form, authorized the Labor Commissioner to adopt appropriate regulations recognizing "as part of the minimum fair wage, gratuities in an amount equal to twenty-three per cent of the minimum fair wage per hour for persons employed in the hotel and restaurant industry ..." The effect of the amendment on General Statutes § 31-60(b) has been summarized by the Office of Legislative Research as follows: "The law requires state Labor Department regulations to grant restaurants and hotel employees a 23% credit against the minimum wage for tipped employees. As a result of the credit, they currently pay tipped employees $4.74 per hour. The act requires those regulations to freeze the amount at $4 .74 until January 1, 2003, when the employers must pay $5.16 ($6.70 minus 23%). It requires employers to pay bartenders who regularly receive tips $6.15 per hour until January 1, 2003, when they must receive $6.70."[3] Summary of 2000 Public Acts, Connecticut General Assembly, Office of Legal Research, p. 202.

3 Public Act 2001, No. 01-42 also increases the size of the tip credit both for service employees and bartenders who regularly receive tips. The court agrees with the plaintiff that the 2000 and 2001 legislation does not make the issue it has raised moot, as the credit for bartenders who customarily receive tips will expire after 2002. See *Loisel v. Rowe*, 233 Conn. 370 (1995).

In the House of Representatives, Representative Prelli, an opponent of the amendment that became P.A. No. 00-144, asked the following of Representative Donovan, the proponent: "[I]f the bartender was working at a bar standing behind the bar mixing drinks, and as part of that somebody sitting at the bar decided to have something to eat, would that bartender now be considered a waitress?" Representative Donovan replied: "No." 43 H.R. Proc., Pt. 10, 2000 Sess., p. 3211.

*6 This extensive review of the text of § 31-60(b) as well as the statute's legislative history indicates that the credit for gratuities developed as a compromise between the restaurant owners favoring an expansion of the credit and others opposed to decreasing the minimum wage in the restaurant industry. It also shows that up until the 2000 session, there was a clear intent by the legislature to differentiate between service and non-service employees.

Even in the recent legislation, Representative Donovan's reply shows that the basic difference between a bartender and wait staff continues, including where and how the meal is served.

Therefore, the plaintiff's challenge to the regulations based on lack of authority must fail. Section 31-60(b), both as originally drafted in 1951 and in its present form, authorizes the Labor Commissioner to issue regulations recognizing gratuities in the hotel and restaurant industry. It was within this broad delegation of power for the commissioner to issue the regulations defining service and non-service employees. Further, the Department was authorized under the delegation received from the legislature to exclude from the definition of service employee bartenders that serve food. *Dadiskos v. Liquor Control Commission,* 150 Conn. 422, 427 (1963).

The second issue raised by the plaintiff is that the definitions set forth in the regulations are irrational and arbitrary because the definition of service employee "exclude[s] bartenders on the basis of where the patrons receive their food and drink, rather than on the basis of the employee's duties." (Petitioner's Brief, p. 9.)[4] In deciding this issue, "the court's function ... is to decide whether the purpose of the legislation is a legitimate one and whether the particular enactment is designed to accomplish that purpose in a fair and reasonable way ... In general, the Equal Protection Clause is satisfied so long as there is a plausible policy reason for the classification ... the legislative facts on which the classification is apparently based rationally may have been considered to be true by the government decision maker ... and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational ... Thus, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices ... In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." (Brackets omitted; citations omitted; internal quotation marks omitted.) *Kostrzewski v. Commissioner of Motor Vehicles,* 52 Conn.App. 326, 341-42 (1999); *Luce v. United Technologies Corp.,* 247 Conn. 126, 143-44 (1998). This standard of review applies equally to a rationality challenge to an agency regulation. *Citerella v. United Illuminating Co.,* 158 Conn. 600, 608 (1969); *Abington Constructors, Inc. v. Department of Consumer Protection,* Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. 555498 (December 17, 1996) (McWeeny, J.).

4 The court agrees with the plaintiff that the case of *Labor Department v. America's Cup,* Superior Court, judicial district of Hartford New Britain at Hartford, Docket No. 516750, 11 Conn L. Rptr. 379 (April 21, 1994) (Hennessey, J.), is not directly applicable in resolving this point. The court did note that if the bartenders of the America's Cup restaurants were found to be service employees, then the "tip credit" applied, but if not, they were entitled to the full minimum wage. The court specifically declined, based upon the stipulation of the parties, to consider a challenge to the regulations on constitutional grounds. Based upon the stipulated facts-all service of meals occurred at the bar itself and not at pool side tables-the court concluded that these bartenders were non-service employees.

*7 The Department's declaratory ruling gave the follow reasons for the distinction between the wait staff and a bartender: "[I]t must be noted that the actual duties incidental to each type of service vary considerably. In contrast to 'service' employees, bartenders engaging in 'non-service' duties are responsible for the setup, maintenance and upkeep of the bar, the stocking of the bar with adequate supplies of alcoholic and non-alcoholic beverages, and the preparation of beverages to be served to patrons. These duties materially differ from the duties performed by their 'service' employee counterparts, and justify the distinction created by the regulations at issue in this declaratory ruling." (ROR, Item 23, p. 12.)

On the specific issue of the bartender who also serves meals the Department stated in the declaratory ruling: "There is also a noteworthy distinction in terms of gratuity compensation for bartenders and waitstaff who are engaged in the same 'service' duties to patrons seated at 'tables or booths.' Generally, gratuities from these patrons are provided directly to waitstaff rather than to the individual bartenders who prepared the beverages. As a result, bartenders do not receive an amount of gratuities which is comparable to their 'service' employee counterparts for the same type of 'service' employee duty. The decreased opportunity for gratuities from patrons seated at 'tables or booths' provides additional justification for the regulatory prohibition on the payment of less than the minimum wage to bartenders." (ROR, Item 23, p. 13.)

The justification of different duties and "decreased opportunities for bartenders" as set forth by the Department

is sufficient to meet the rational basis test of *Kostrzewski* and *Luce*, quoted above. The agency has sufficiently "educated itself" on the restaurant industry and properly issued the definitional regulations. *Salmon Brook Convalescent Home v. Comm. on Hosp. & Health Care*, 177 Conn. 356, 364 (1979).

The Department also suggested that the plaintiff had challenged the regulations defining service and non-service employees without attempting to follow the segregation procedure set forth in Regulation § 31-62-E4. This regulation attempts to ameliorate any hardship to the employer that might arise in the applying of the regulations to individual business situations. "It is unrealistic to demand detailed standards which are impracticable or impossible ... As the complexity of economic and governmental conditions increases, the modern tendency is liberal in approving broad regulatory standards so as to facilitate the operational functions of administrative boards or commissions." *Morgan v. White*, 168 Conn. 336, 348 (1975); *Forest Construction Co. v. Planning & Zoning Commission*, 155 Conn. 669, 679 (1967).

In holding the Department's action in 1955 in setting the tip credit at thirty cents not irrational, Justice Baldwin well summarized why the plaintiff's challenge must fail here too. "The statute is one of broad application. It comprehends a wide variety of ways and means of furnishing remuneration for services rendered. An administrative agency must, of necessity, deal with specific classes of cases. Any statute empowering it to act could not possibly be drawn to meet every exceptional situation ... It is true that there is a wide range in the amounts collected in tips in the several callings where such gratuities are usually given. So, also, there is a wide range in the type and quality of the service rendered. Some workers will always earn more than others. It is sufficient if the statute and the regulation are reasonably designed to make sure that no one receives less than the prescribed minimum. There is nothing in the record to indicate that the ... defendant was moved by any consideration of partiality or that an earnest effort was not made to arrive at a just apportionment of the amount of gratuities to be included in the minimum wage." (Citations omitted.) *West v. Egan*, 142 Conn. 437, 444-45 (1955).

*8 Based on the foregoing, the plaintiff's appeal is dismissed.

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